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14
15 **IN THE UNITED STATES DISTRICT COURT**
16
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 Chris Smith, Cheryl Smith, Karen Smithson,
19 Jason Roush, and Corey Pomroy, individually
and on behalf of all other similarly situated
20 individuals,

21 Plaintiffs,

22 v.

23 APPLE INC.,

24 Defendant.

25 Case No.:

26 **CLASS ACTION COMPLAINT FOR**
27 **1) Violations of California Unlawful
Competition Law, Cal. Bus. & Prof. Code §
17200, *et seq.***
28 **2) Violations of California Consumers
Legal Remedies Act, Cal. Civ. Code § 1750,
*et seq.***
2) **Fraud By Omission**
4) **Violations of the Song-Beverly
Consumer Warranty Act, Cal. Civ.
Code § 1791, *et seq.***
5) **Breach of Implied Warranty**
6) **Violation of the Magnuson Moss
Warranty Act, 15 U.S.C. § 2301, *et seq.***

29 **JURY TRIAL DEMANDED**

1 Plaintiffs Chris Smith, Cheryl Smith, Karen Smithson, Jason Roush, and Corey Pomroy,
2 individually and on behalf of all others similarly situated, allege as follows against Defendant Apple,
3 Inc.:

4 **INTRODUCTION**

5 1. This action is brought on behalf of individuals who purchased First Generation (“Series
6 0”), Series 1 through Series 6, and Series SE Apple Watches of every size and model (collectively, the
7 “Apple Watch” or “Watch”). Apple has consistently marketed its Watch as a safe wearable device
8 meant to help consumers live safer and healthier lifestyles.

9 2. However, the Apple Watch contains an undisclosed and unreasonably dangerous safety
10 hazard: a small wearable device intended to rest on a user’s wrist with no thermal or other solution to
11 prevent and/or mitigate the danger of a detached, shattered, or cracked Watch screen resulting from the
12 insufficient space allocated within the device for the rectangular shaped, electromagnetically charged
13 lithium cobalt oxide battery inside a polymer pouch (the “Defect”). Knowing the battery inside the
14 Watch can suddenly swell, Apple allocated insufficient room inside the Watch for it to freely expand
15 without affecting the Watch screen face and/or failed to incorporate a protective guard to keep it from
16 making contact with the Watch screen face, and/or otherwise failed to prevent detachment, shattering, or
17 cracking of the Watch screen face as described above. The swelling creates considerable upward
18 pressure on the Watch face, causing detachment, shattering, and/or cracking of the screen through no
19 fault of the wearer, exposing its razor-sharp edges and leading to operational failure of the Watch and/or
20 personal injuries resulting from unintended bodily contact with the detached, shattered, or cracked
21 screen.

22 3. To be clear, the Defect is not the normal degradation of the lithium-ion battery, but
23 instead the placement of that battery in the above-described configuration where the battery’s expansion
24 can cause screen damage or detachment, operationally destroy the product, and harm or potentially harm
25 the user.

26 4. The detached, shattered, or cracked screens are a material and unreasonably dangerous
27 safety hazard. The screens are made either of Ion-X glass (aluminum models) or sapphire crystal glass
28 (stainless steel and titanium models) and each have a razor-sharp edge on all four sides. Even after a

1 failure, the exposed screen remains secured to the back of the Watch (and therefore within close
2 proximity to a consumer's body) by means of the tiny flexible wire depicted below.
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14 5. When a consumer's body contacts the sharp edge of the detached, shattered, or cracked
15 screen, there is substantial and material risk of serious injury, including lacerations, cuts, abrasions, and
16 other injuries.

17 6. The defective Watches injured Plaintiff Chris Smith and other Class members. The
18 injury to Chris Smith caused by the detached screen of a Series 3 Apple Watch is depicted below:
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1 7. Apple Watch First Generation, Series 1 through Series 6, and Series SE all contain the
2 same Defect, regardless of the model or case size.

3 8. The Defect affects the core or central functionality of the Watch and often manifests
4 during the stated express and implied warranty periods, and/or during the periods covered by Apple's
5 limited Screen Replacement Program (described below). The Defect can also manifest after these
6 warranty and/or Screen Replacement Program periods.

7 9. Since 2015, Apple has sold tens of millions of Watches with the Defect throughout the
8 United States, and knew that the Watches contain the Defect and were unmerchantable and/or not fit for
9 their intended purpose. Nonetheless, Apple failed to disclose the Defect to Plaintiffs and Class members
10 prior to, at, and since the time of purchase.

11 10. The Defect poses a material and unreasonable safety hazard to consumers, as it has
12 caused many purchasers to suffer lacerations, cuts, abrasions, and/or other injuries in connection with
13 the screens cracking, shattering and/or detaching from the body of the Watches. Notwithstanding the
14 material and unreasonable safety hazard caused by the Defect with the Watches, Apple did not disclose
15 the Defect to consumers.

16 11. Further, Apple's conduct, when confronted with the Defect, indicates that its internal
17 policy has been to deny the existence of the Defect, claim the Defect was the result of "accidental
18 damage" caused by consumers, and then refuse to honor its Limited Warranty on those grounds.
19 Consumers who are refused coverage under the Limited Warranty are faced with the choice of incurring
20 the significant expense of repairing or replacing their defective Watches.

21 12. Apple knew that purchasers of the Watches would reasonably expect the screens to
22 function in a predictable and expected manner, and would not crack, shatter, or detach from the body of
23 the Watch during normal use. Plaintiffs and Class members have precisely that expectation. Apple was
24 also aware that purchasers of the Watches would reasonably expect that the Watches would not pose an
25 unreasonable safety hazard, just as Plaintiffs and Class members expected. Further, Apple knew that
26 purchasers of the Watches would reasonably expect that potential defects, including the Defect, would
27 be covered under its Limited Warranty if they manifested themselves during the warranty period, just as
28 Plaintiffs and other consumers expected.

13. Plaintiffs and other Class members were unaware of the Defect at the time of purchase. Had Plaintiffs and other Class members known about the Defect at the time of purchase, Plaintiffs and Class members would not have purchased a Watch, would not have purchased a Watch at the prices they did, or would have returned their Watch during their respective buyer's remorse periods.

14. Plaintiffs and other Class members would purchase a Watch in the future if the devices were reasonably safe, functioned as advertised, and/or if the Court ordered Apple to comply with all pertinent advertising and warranty laws.

15. As a result of the Defect in the Watches and the monetary costs associated with overpayment, repair, replacement, and lost use of the Watches, Plaintiffs and Class members have suffered injury in fact, incurred ascertainable loss and damages, and have otherwise been harmed by Apple's conduct.

16. Plaintiffs bring this class action on behalf of themselves and all other similarly situated persons who purchased a First Generation, Series 1 through Series 6, or Series SE Apple Watch for the purpose of obtaining damages, or, if not available, then restitution, injunctive, and/or other equitable relief. More specifically, this action is brought to remedy violations of law in connection with Apple's misconduct, including: its fraudulent omission of material facts concerning the Defect during the distribution, marketing, sale and advertisement of the Watches; violations of certain consumer protection statutes; and breach of implied warranties and warranty statutes.

17. As a result of Apple’s conduct, Plaintiffs and the Class allege violations of the California Unlawful Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”); violations of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”); fraudulent omissions; violations of the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1791 *et seq.*; breaches of implied warranties; and violations of the Magnuson Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*

JURISDICTION AND VENUE

18. This Court has federal subject matter jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. § 1331 as well as pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §

1 1332(d), as the amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs,
2 there are more than 100 putative class members, and minimal diversity exists because many putative
3 class members are citizens of a different state than Defendant.

4 19. This Court also has supplemental jurisdiction over Plaintiffs' Magnuson-Moss Warranty
5 Act claims as well as state and common law claims pursuant to 28 U.S.C. § 1337(a) because they form
6 part of the same case and controversy and derive from a common nucleus of operative facts.

7 20. Venue is proper in this District pursuant to 18 U.S.C. § 1333(a) and 28 U.S.C. §
8 1333(b)(2) because Defendant conducts its affairs in this District and a substantial part of the events
9 giving rise to Plaintiffs' claims occurred in this District.

10 21. This Court has personal jurisdiction over Defendant because its principal place of
11 business is in California. Additionally, Defendant is subject to specific personal jurisdiction in this State
12 because a substantial part of the events and conduct giving rise to Plaintiffs' and the Class claims
13 occurred in this State.

PARTIES

15 22. Plaintiff Chris Smith is an Alabama citizen domiciled in Alabama. On or about
16 December 25, 2017, he received a new Series 3 GPS Aluminum 42mm Apple Watch (Serial No.
17 FH7VQBEYJ5X4) purchased by his mother, Cheryl Smith, from Best Buy in Daphne, Alabama for
18 \$359.00 plus tax.

19 23. Plaintiff Cheryl Smith is an Alabama citizen domiciled in Alabama. On or about
20 December 15, 2017, she purchased a new Series 3 GPS Aluminum 42mm Apple Watch (Serial No.
21 FH7VQBEYJ5X4) from Best Buy in Daphne, Alabama for \$359.00 plus tax and gifted it to her son,
22 Chris Smith, on December 25, 2017.

23 24. Plaintiff Karen Smithson is a California citizen domiciled in California. On or about
24 December 18, 2016, she purchased a new Series 2 Stainless Steel 38mm Apple Watch (Serial No.
25 FHLTP06ZHDXL) from the Apple Store in San Francisco, California for \$1,049.00 plus tax.

26 25. Plaintiff Jason Roush is an Ohio citizen and domiciled in Ohio. In November 2017, he
27 purchased a new Series 2 Nike Edition Aluminum 42mm Apple Watch (Serial No. FHLTK0HRHF1N)
28 from Best Buy in Akron, Ohio for approximately \$350.00 plus tax.

26. Plaintiff Corey Pomroy is a Maryland citizen domiciled in Maryland. In December 2018, he purchased a new Series 3 Cellular Nike + 42mm 3rd Gen (Serial No. G99XF4VHJ6GP) online and had it shipped to Maryland for approximately \$300.00 plus tax.

27. Defendant Apple is a California corporation with a principal place of business at One Apple Park Way, Cupertino, California 95014. Apple regularly conducts business throughout California and in this judicial district. Apple started selling Apple Watches in April 2015 when it introduced its “First Generation” Apple Watch (“Series 0”). Since September 2016, Defendant has released additional “Generations” of the Apple Watch: the Second Generation Watches (Series 1 and Series 2)¹; the Third Generation Watch (Series 3); the Fourth Generation Watch (Series 4); the Fifth Generation Watch (Series 5); and the Sixth Generation Watch (Series 6 and SE). The different series of Watches come in various models, including in many instances Aluminum, Stainless, Nike, Hermes, and Edition.

28. Upon information and belief, Apple makes all its decisions about advertising, promotional literature, product packaging, its online purchase portal, User Guides, and on-screen device instructions in California and disseminates all these materials from California. Apple designed the Watches in California. Apple's engineering, product development, website, marketing, and sales departments are all based in California and all relevant decisions associated with the Watch made by these departments are made in California. Apple made the decision not to disclose the Defect in California.

COMMON FACTUAL ALLEGATIONS

Watches Manufactured, Advertised, and Sold by Apple

29. Since as early as 2015, Apple has designed, manufactured, distributed, marketed, warranted, and sold—directly via the internet, its App store, or physical Apple Store locations – or indirectly through authorized stores and other retail outlets—millions of defective Watches in California and nationwide.

30. Apple contracted with retailers so that the retailers could sell Watches to consumers. Apple intended that consumers would be the end users of Watches and that consumers would be the

¹ The Series 1 and 2 were both in the same Generation.

1 beneficiaries of its contracts with retailers to sell Watches to consumers.

2 31. Apple first began selling its Watches in April 2015 when it introduced the First
3 Generation Apple Watch. The First Generation Apple Watch used aluminum or stainless steel cases
4 with sapphire crystal screens, but consumers were able to choose between a 38mm case and a 42mm
5 case. Initially, prices for the First Generation varied between \$349 and \$549 – depending on the size
6 chosen – but dropped following the release of new versions of the Watch.

7 32. Starting in September 2016, Apple discontinued the manufacture of the First Generation
8 Apple Watch and began to produce and sell both Second Generation (Series 1 and Series 2) Watches.

9 33. The Series 1 Watches only used aluminum cases with “Ion-X glass” screens, but
10 consumers were able to choose between a 38mm case and a 42mm case. Initially, prices for Series 1
11 watches varied between \$269 and \$299—depending on the size chosen—but dropped following the
12 release of new versions of the Watch.

13 34. Upon information and belief, purchasers of the Series 2 Watch could choose various
14 models, with either a 38mm or 42mm case. Depending on the model, Series 2 Watches had aluminum,
15 ceramic, or stainless-steel cases, and either Ion-X glass or sapphire crystal screens. Again, depending on
16 the model selected, prices for the Series 2 watches ranged from \$269 to \$1,249.

17 35. In September 2017, Apple discontinued the manufacture of the Series 2 Watch, and in
18 September 2018, Apple announced that it would no longer sell the Series 1 Watch.

19 36. In September 2017, Apple released the Third Generation (Series 3) Watch. Initially, there
20 were several models of the Series 3. Depending on the model, Series 3 Watches would have aluminum,
21 ceramic, or stainless-steel cases, and either Ion-X glass or sapphire crystal screens. Consumers can
22 select between a 38mm or 42mm case. Depending on the model, prices for the Series 3 varied between
23 \$329 and \$1,399. As of the filing of this Complaint, Apple has not discontinued the manufacture or sale
24 of the Series 3 Watch.

25 37. In September 2018, Apple released the Series 4 Watch. Initially, there were several
26 models of the Series 4. Depending on the model, Series 4 Watches would have aluminum, ceramic, or
27 stainless-steel cases, and either Ion-X glass or sapphire crystal screens. Consumers can select between a
28 40mm or 44mm case. There are several models of the Series 4 Watch, and, depending on the model, its

1 price varies from \$399 to \$1,499.

2 38. In September 2019, Apple discontinued the manufacture of the Series 4 Watch.

3 39. In September 2019, Apple released the Series 5 Watch. Initially, there were several
4 models of the Series 5. Depending on the model, Series 5 Watches would have aluminum, ceramic, or
5 stainless-steel cases, and either Ion-X glass or sapphire crystal screens. Consumers can select between a
6 40mm or 44mm case. There are several models of the Series 5 Watch, and, depending on the model, its
7 price varies from \$399 to \$1,499.

8 40. In September 2020, Apple discontinued the manufacture of the Series 5 Watch.

9 41. In September 2020, Apple released the Series 6 Watch. Initially, there were several
10 models of the Series 6. Depending on the model, Series 6 Watches would have aluminum, ceramic, or
11 silver stainless-steel cases, and either Ion-X glass or sapphire crystal screens. Consumers can select
12 between a 40mm or 44mm case. There are several models of the Series 6 Watch, and, depending on the
13 model, its price varies from \$399 to \$1,499.

14 42. In October 2021, Apple discontinued the manufacture of the Series 6 Watch.

15 43. Also in September 2020, Apple released the Series SE Watch, a lower cost version of its
16 Series 6 Watch. Depending on the model, Series SE Watches would have aluminum cases with Ion-X
17 screens. Consumers can select between a 40mm or 44mm case. There are also several models of the
18 Series SE Watch, and, depending on the model, its price varies from \$279 to \$309. As of the filing of
19 this Complaint, Apple has not discontinued the manufacture or sale of the Series SE Watch.

20 **Apple's Omissions About The Watches**

21 44. From their inception, the Watches have been advertised as "smart watches," with
22 functions well beyond simply telling the time. Consumers can, among other things, download files,
23 receive and send text messages, track their location, and receive phone calls.²

24 45. More importantly, Apple has consistently marketed the Watches as activity-oriented
25 devices that consumers can take anywhere and safely use for any practical purpose. Advertisements for
26 the Series 1 Watch that had appeared on Apple's website invited consumers to: "Track your activity.

28 ² <https://www.apple.com/watch/>

1 Measure your workouts. Monitor your health.”³ Consumers were encouraged to pick from a variety of
 2 workouts and Apple promised that the Watch would accurately measure movement. Apple advertises
 3 that Apple Watch Series 6, Apple Watch SE, and Apple Watch Series 3 have a water resistance rating of
 4 50 meters under ISO standard 22810:2010.⁴ The Watches also included fitness and health capabilities.
 5 Likewise, the Series 3 is advertised as the “Ultimate Sports Watch” that can track indoor and outdoor
 6 activities.⁵

7 46. Advertising campaigns for the Watches have shown, and continue to show, Apple Watch-
 8 wearers participating in a variety of athletic activities from running, hiking, and climbing, to dancing,
 9 swimming, and surfing.⁶

10 47. Apple has also consistently marketed the Watch as “healthy” and “safe.”

11 a) First Generation

12 “Apple Watch is...a groundbreaking health and fitness companion.”⁷

13 b) Series 1

14 “Apple Watch is the ultimate companion for a healthy life” with “breakthrough new
 15 fitness and health features...”⁸

16 c) Series 2

17 Apple Watch has “changed people’s lives” and is “packed with features to
 18 help...customers live a healthy life.”⁹ It is the “perfect running partner on your wrist.”¹⁰

20
 21 ³ As the Series 1 and Series 2 watches are no longer sold by Apple, the advertisements have been
 removed from Apple’s website.

22 ⁴ https://www.apple.com/apple-watch-se/?afid=p238%7Cs1Phk1EPY-dc_mtid_20925qtb42335_pcrid_534965872726_pgrid_114810878159_&cid=wwa-us-kwgo-watch-slide-Brand-AppleWatchSE-Evergreen-

23 ⁵ <https://www.apple.com/apple-watch-series-3/>

24 ⁶ <https://www.youtube.com/watch?v=1b6W3ltMRN0>;

25 <https://www.youtube.com/watch?v=kXySS9j4Rxg>; <https://www.apple.com/watch/films/>;
https://www.youtube.com/watch?v=0cBJBj_tbHM; <https://www.youtube.com/watch?v=AELaas6CV8I>;
<https://www.youtube.com/watch?v=TCMnrssX1NE>.

26 ⁷ <https://www.apple.com/newsroom/2015/03/09Apple-Watch-Available-in-Nine-Countries-on-April-24/>

27 ⁸ <https://www.apple.com/newsroom/2016/06/apple-previews-watchos-3/>

28 ⁹ <https://www.apple.com/newsroom/2016/09/apple-introduces-apple-watch-series-2/>

¹⁰ <https://www.apple.com/newsroom/2016/09/apple-nike-launch-apple-watch-nike/>

1 d) Series 32 Apple Watch is “an amazing health and fitness companion” and is the “ultimate device
3 for a healthy life.”¹¹4 e) Series 45 Apple Watch “becomes an intelligent guardian for your health.”¹² Apple promotes the
6 Watch as a “fitness and workout companion.” *Id.*7 f) Series 58 Apple Watch makes users “empowered to take charge of their health and fitness...”¹³9 g) Series 610 “On your wrist. Anytime. Anywhere.”¹⁴ Apple markets the Watch to be worn while
11 customers sleep.¹⁵ “...Apple Watch offers a remarkable set of features that can help
12 them keep in touch with loved ones, be more active and stay safe.”¹⁶ “[W]atchOS 7 also
13 offers optimized features for older adults, adding to the powerful set of health and safety
14 tools currently available...” *Id.* Apple encourages customers to buy Watches for their
15 children¹⁷ and encourages healthcare providers to promote use of Watches by their
16 patients.¹⁸17 h) Series SE18 “Powerful features to keep you healthy and safe.”¹⁹

19 48. Based on these and other advertisements and the high purchase price for Apple Watches,

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¹¹ <https://www.apple.com/newsroom/2017/09/apple-watch-series-3-features-built-in-cellular-and-more/>¹² <https://www.apple.com/newsroom/2018/09/redesigned-apple-watch-series-4-revolutionizes-communication-fitness-and-health/>¹³ <https://www.apple.com/newsroom/2019/09/apple-unveils-apple-watch-series-5/>¹⁴ <https://www.apple.com/apple-watch-series-6/>¹⁵ <https://www.apple.com/apple-watch-series-6/>¹⁶ <https://www.apple.com/newsroom/2020/09/apple-extends-the-apple-watch-experience-to-the-entire-family/>¹⁷ <https://www.apple.com/apple-watch-series-6/>¹⁸ <https://www.apple.com/healthcare/>¹⁹ https://www.apple.com/apple-watch-se/?afid=p238%7Cs1Phk1EPY-dc_mtid_20925qtb42335_pcrid_534965872726_pgrid_114810878159_&cid=wwa-us-kwgo-watch-slid--Brand-AppleWatchSE-Evergreen-

consumers who purchase Apple Watches reasonably expect well-made, durable devices that can consistently perform multiple functions and withstand a variety of conditions without issue. Consumers also expect that they will be able to use the Watches without experiencing an unreasonable safety hazard.

49. Apple places information about the Watch on, among other things: (1) its website; (2) in its advertisements and promotional materials; (3) on its packaging; (4) in its online purchase portal; (5) in the User Guide; and (6) and on a user's device when pairing the Watch with an iPhone. Each Plaintiff reviewed materials where the Defect should have been disclosed, as described in more detail below. In all these places, Apple uniformly failed to disclose that the Watches contained the Defect that would cause them to fail and render them an unreasonable safety hazard resulting in injury to the wearer. This makes the Watches unmerchantable and unfit for the uses Apple advertised, e.g., activity oriented, fitness, athletic use, health, and safety.

50. Each Plaintiff ordinarily prefers Apple products to similar products manufactured by Apple's competitors. Apple continues to advertise the Watch's health, fitness, and safety features. But, because of their experiences with the Watches, Plaintiffs do not trust Apple's representations about its Watches. As a result, although Plaintiffs would like to buy the Apple Watch again, they will not do so unless Apple takes sufficient steps to effectively cure the Defect and ensure the accuracy of its representations about the Watch.

Apple's Knowledge of the Defect

51. For more than 10 years, Apple has gathered substantial data on its batteries' performance that was not available to consumers. Apple acknowledges that battery testing was conducted by Apple in August 2018 for its Series 3 Watches and August 2020 for its Series 6 and Series SE Watches.²⁰ Upon information and belief, Apple did extensive battery testing on other Apple Watches before 2015 and leading up to the release of each Series Watch.

52. Apple knew that the Watches were defective at or before the time it began selling them to

²⁰ <https://www.apple.com/watch/battery/>

1 the public. In U.S. Patent Application Publication No. US 2017/0033567 (dated February 2, 2017 but
 2 filed July 27, 2015), Apple acknowledges: “[T]he higher the capacity of the battery the longer the
 3 electronic device can be used at a time, making the electronic device more useful. This may particularly
 4 be the case for highly portable devices such as tablet computers, smart phones, or wearable electronic
 5 devices where acceptable battery size and weight may be limited, thus also possibly limiting battery
 6 capacity.” (emphasis added). Apple’s U.S. Patent No. 9,912,186 (issued March 6, 2018, but application
 7 pending since 2011) acknowledges: “Continued use of a lithium-polymer battery over time may also
 8 produce swelling in the battery’s cells. . . a user of a device may not be aware of the battery’s swelling
 9 and/or degradation until the swelling results in physical damage to the device.” (emphasis added).

10 53. Despite this knowledge, the Apple Watch contains an undisclosed and unreasonably
 11 dangerous safety hazard: a small wearable device intended to rest on a user’s wrist with no thermal or
 12 other solution to prevent and/or mitigate the danger of a detached, shattered, or cracked Watch screen
 13 resulting from the insufficient space allocated within the device for the rectangular shaped,
 14 electromagnetically charged lithium cobalt oxide battery inside a polymer pouch.

15 54. Consumers complained to Apple about damage caused by the Defect almost immediately
 16 after Apple released the First Generation Watch (Series 0).

17 55. Shortly after the release of the First Generation watches in April 2015, consumers who
 18 purchased the First Generation Watch complained that the screens on their Watches had cracked,
 19 shattered, or completely detached from the body of their Watches. In all instances, consumers made
 20 clear that these occurrences were not the result of damage or misuse on their part, explaining instead that
 21 the Defect manifested itself suddenly and unexpectedly.

22 56. The Apple Watch “Support Communities” forum is a support forum for current Apple
 23 Watch owners to seek advice regarding issues they are experiencing with their respective Apple
 24 Watches. Many postings require an Apple account, credentials, and sign-in to be viewed.²¹

25 _____
 26
 27 ²¹
 28 <https://idmsa.apple.com/IDMSWebAuth/signin?path=%2F%2Fcreate%2Fquestion%3Flogin%3Dtrue&language=US->

1 57. Apple monitors the Apple Watch “Support Communities” forum. Apple acknowledges
 2 that “Apple may respond to questions but does not formally provide technical support on the Site.”²²
 3 Additionally, Apple explains: “If you provide any ideas, suggestions, or recommendations on this site
 4 regarding Apple’s products, technologies or services (“Feedback”), Apple may use such Feedback and
 5 incorporate it in Apple products, technologies, and services without paying royalties and without any
 6 other obligations or restrictions.”²³

7 58. The Apple Watch “Support Communities” forum is replete with complaints about the
 8 Defect and Apple’s persistent refusal to cover the Defect under its Limited Warranty. Below are
 9 representative examples of complaints on Apple’s Support Communities forum describing Watch
 10 screens detaching, shattering, or cracking (many of which include photographs) as a result of the Defect,
 11 which exposes the screens’ razor-sharp edges. Such posts are among many others dating back to at least
 12 April 2016 referencing initially the First Generation Watch and, over time, have continued to be made
 13 by consumers with respect to every other series, including as recently as November of 2021. Apple’s
 14 response in most cases is the same: it implicitly or expressly (and improperly) blames the consumer for
 15 the Defect and refuses to cover repairs under the Limited Warranty or otherwise. Apple then charges
 16 consumers an expensive “out of warranty service fee” to replace the Watch face, which often approaches
 17 the cost of a new Apple Watch.

18 59. The following quotations are representative of consumers’ experiences with the First
 19 Generation Watch on that forum²⁴:

- 20
- 21 • Billfromcottonwood, posted on April 29, 2016: I ordered my watch on 5/10/2015
 22 I’ve had no problems till last night. **I wore it to bed and checked to see what
 23 time it was. I pressed the bottom button and then the top face fell off.** How
 24 long is the warranty and who should I contact regarding this problem. Thanks for
 your help! (URL: <https://discussions.apple.com/thread/529eb2b096d5a3d54162171f0f29ba797e602812660013123243e58bc7bedf56&rv=1>)

25 ²² <https://discussions.apple.com/terms>

26 ²³ *Id.*

27 ²⁴ All references to forums of this nature throughout the complaint maintain all of the original
 28 typographical, spelling, and other errors so that they appear exactly as they do on the forum.

1 <https://discussions.apple.com/thread/7547957?answerId=30139127022#30139127022> (emphasis added).

- 2 • Mariep999, posted August 19, 2016: ...**I was doing an exercise class and had my watch on then I heard a clicking noise. I looked and the watch face had popped out and was hanging by a cable.** I wasn't doing anything strenuous at that point. I had worn my watch exercising numerous times and it's been fine. What would cause watch face to pop out? I've had my watch for over a year so it will be out of warranty. I've no other issues with it apart from this. I look after my watch and I've never had it wet. (URL: <https://discussions.apple.com/thread/7641542>) (emphasis added).
- 3 • gbussey, posted August 31, 2016: ...**My history has been the glass front of the watch detaching. Has happened three times.** Anybody else with similar problem? Ever discover the cause? Thanks (URL: <https://discussions.apple.com/thread/7652700>) (emphasis added).
- 4 • Mercadoj (First Generation), posted August 16, 2017: I purchased my Apple Watch (stainless steel) in June of 2015. Being a near \$800 Watch, saying it's been well cared for is an understatement. The Watch has ... no scratches or dents, never been dropped, or exposed to water. **While working at my desk at work I noticed the screen dangling from the Watch housing.** I took the Watch to a local Apple Store, and they sent it to Apple for further review. After a couple of days they called and refused to fix the Watch because they claimed the screen fell off because of "accidental damage" and the device was "out of warranty." (URL: <https://discussions.apple.com/thread/8041416>) (emphasis added).
- 5 • Ankush Narula (First Generation), posted September 17, 2017: I have the same issue with my first generation (stainless steel) Apple Watch. **One day the screen just popped off while I was walking and now it hangs by the ribbon cable.** I can press the screen and the body together but the screen doesn't remain attached. I took it to the Apple Store this past Friday and the Genius Bar confirmed that there is no physical damage. However, they told me that my AppleCare warranty is expired and my device is not covered. I mentioned that I've read Apple has extended the warranty for first generation Apple Watch to 3 years. They said the extended warranty only applies to the Apple Watch Sport – not to the Apple Watch or Apple Watch Edition. Out of warranty repair cost is \$249. Very disappointing for a \$700 device for someone who over 20 years has spent tens of thousands on Apple products and thousands on AppleCare. (URL: <https://discussions.apple.com/thread/8041416>) (emphasis added).
- 6 • William YZF-R1 (First Generation), posted Sep 25, 2017: Same think happened to me too - 18 month old 42mm Milanese loop. I have hardly worn the watch but yesterday **when I was driving I felt something catching on my sleeve and looked down to see the watch screen hanging on by its ribbon cable.** Incidentally the watch became very hot on my wrist at the same time so I took it off and laid it on the floor of the car. I am reading of swollen batteries causing the screen to pop off and coincidentally perhaps I upgraded to OS4 a couple of days ago which seems to stressing the battery according to some posts. Sadly it is out of warranty but I genuinely consider this is a manufacturing fault and I fully expected my Apple watch to last considerably longer. (URL: <https://discussions.apple.com/thread/8041416>) (emphasis added).

1 <https://discussions.apple.com/thread/7867965>) (emphasis added) (emphasis
 2 added).

3 60. Apple had persistently denied any widespread issue with its First Generation watches,
 4 but, in April 2017, Apple acknowledged a swelling battery in certain First Generation (Series 0) watches
 5 and extended its Limited Warranty for qualifying First Generation watches from one year to three years.
 6 Other sources available to Apple, and, upon information and belief, that Apple accessed and viewed,
 7 stated unequivocally: “The battery problem causes the Apple Watch screen to pop away from the casing,
 8 rendering it unusable.”²⁵

9 61. Before the First Generation Watch was released, Apple knew about the Defect and its
 10 propensity to cause personal injury from its own product research, patent drafting, and pre-release
 11 testing. Apple’s knowledge of the Defect accumulated after its receipt of consumer complaints, service
 12 repair requests, warranty claims, and media reports for First Generation Watches. Each subsequent
 13 series – namely Series 1, Series 2, Series 3, Series 4, Series 5, Series 6, and Series SE – had the same
 14 battery shape, the same battery chemistry, the same available screen materials (Ion X glass and sapphire
 15 crystal), the same internal configuration, came in one of four limited sizes (38mm, 40mm, 42mm, or
 16 44mm), had the same dangerous space constraints, were designed to be worn in the same location (a
 17 consumer’s wrist), and lacked any thermal or other solution to prevent and/or mitigate the danger of a
 18 detached, shattered, or cracked Watch screen. Nothing material changed with respect to the Defect
 19 between the First Generation watches and each subsequent series. Therefore, Apple’s knowledge of the
 20 Defect and its propensity to cause personal injuries before the release of the First Generation (and its
 21 accumulated knowledge after the release of each series through all the means described herein) directly
 22 relates to its knowledge of the Defect in every subsequent series.

23 62. Apple began to sell its Second Generation Watches (Series 1 and Series 2) in September
 24

25 <https://www.macrumors.com/2017/04/28/original-apple-watch-repairs-extended/>

1 2016. Very shortly thereafter, consumers who purchased the Series 1 and Series 2 Watches complained
 2 that the screens on their Series 1 and Series 2 Watches had cracked, shattered, or completely detached
 3 from the body of their Watches. These consumers took their defective Watches to Apple Stores,
 4 contacted Apple Support, and posted their complaints on the Apple Watch “Support Communities”
 5 forum on apple.com.
 6

7 63. Media outlets also extensively reported this problem with the Apple Watch. In May
 8 2017, InvestorPlace Media reported: “Making the battery even last all day without expanding the size of
 9 the smartwatch is going to be a challenge. And now – thanks to the original Apple Watch battery issues
 10 – Apple Inc. is going to need to balance that need for more power with being extremely cautious about
 11 strapping lithium-ion batteries to owners’ wrists.”²⁶
 12

13 64. Apple monitors the Apple Watch “Support Communities” forum. The following
 14 quotations are representative of consumers’ experiences with the Series 1 and 2 Watches on that forum:
 15

- 16 • Juliefromnew smyrna beach (Series 1), posted March 5, 2017: **Apple Watch series 1**
 17 **face fell off.** (URL: <https://discussions.apple.com/thread/7882834>) (emphasis added).
- 18 • Posted by Michwool on April 17, 2017: “Has anyone known the screen of their watch
 19 come completely off? This looks as though the top of the screen has lifted straight off, no
 20 chips or cracks. **It is really sharp and has cut right through the top of my wrist.** Only
 21 had the Watch 6 months.” (URL: <https://discussions.apple.com/thread/7927927>)
 22 (emphasis added).
- 23 • Mightymackem (Series 2), posted May 14, 2017: My series 2 has just done the exact
 24 same thing! Only had it a month and a half. I’m armed forces so I use it for running etc as
 25 it’s designed for...**fine one minute, next it’s decided to be a jack in the box and is**
 26 **hanging by the ribbon.** Cracked all around the face. (URL:
<https://discussions.apple.com/thread/7641542>) (emphasis added).
- 27 • Snetmail (Series 2), posted October 14, 2017: This is exactly the same situation I had. **I**
was sitting at my desk at work and noticed that the screen was suddenly detached. I
 28 have only had my watch (Nike version - 2nd generation I think - 38mm) for 4 months and
 I have never gotten it wet or dropped it. I was shocked when Apple sent it for repair and I
 was told it was found to have been accidentally damaged. There are not even any

²⁶ <https://investorplace.com/2017/05/apple-inc-aapl-has-an-apple-watch-problem/>

1 scratches on it. I would think there could be accidental damage in simply shipping a
 2 product with out a connected screen if that is the case. I don't typically buy Apple care
 3 because I am careful with my devices and the devices are usually of good quality
 4 hardware-wise. I am shocked and upset about this. It may be the end of my relationship
 5 with Apple products. This is unacceptable. (URL:
 6 <https://discussions.apple.com/thread/8041416>) (emphasis added).

- 7 • Thony0415 (Series 1), posted December 13, 2017: Same thing happened with my
 8 apple watch series1. **I was just standing in the garden on a sunny day then**
 9 **suddenly I felt something has popped from my wrist. Then I realised the**
 10 **screen is shattered.** I called up the apple centre and they keep on telling me they
 11 have no similar cases from the past and make it appear that it might have been
 12 caused by accident. Now I can see that Im not alone. Apple should just gracefully
 13 admit that something is terribly wrong with the product than make us all appear
 14 liars! (URL: <https://discussions.apple.com/thread/7889589>) (emphasis added).
- 15 • JHi47644 (Series 2), posted March 13, 2018: My wife had the same problem on the series
 16 2 watch. **Sat in the car, went to check her watch and noticed it had cracked around**
 17 **all 4 edges and just hanging off from the top.** Logged a support call and sent them
 18 photos and the watch to be told I need to pay for it to be repaired because they found
 19 another crack coming from one of the cracks on the edge down to the case.....I've tried 3
 20 time for them to accept that we have not dropped it and I can't see a crack in the original
 21 photos but they won't accept it. My point to them was that given its my word against
 22 theirs, if it had been knocked on the inside edge of the watch without her knowing (some
 23 how) why would it radiate all the way around the screen and what type of force would
 24 that take, its supposed to be a sports watch! Looks like I'm left paying to get the watch
 25 replaced but I won't go near Apple again, after being a customer for many, many years.
 26 They have no complaints procedure and no way to escalate. (URL:
 27 <https://discussions.apple.com/thread/8223086?page=41>) (emphasis added).

28 65. Upon information and belief, Apple monitors the Reddit Apple Watch Community page.

The quotation below is representative of consumers' experience with the Series 2 Watch on that page:

- 29 • Lillianet under the r/AppleWatch Community page on Reddit: I got a Series 2 Apple
 30 Watch back in November 2016 as a gift....Despite my bad habit of dropping and
 31 breaking phones, my watch has been safely on my wrist for the past 9ish months with no
 32 incidents. However, this past Friday I was doing yardwork at my friend's place and I
 33 went to rub my back, which was sweating from digging holes in the ground. It sort of
 34 stung, which was weird, and I asked my friend if he could see anything – he said no
 35 although it looked like I had a scratch on my back. It felt really damp a minute later, so I
 36 felt it to figure out why, and **when I pulled my hand back it was covered in blood.**
 37 **Obviously unexpected bleeding freaked me out, and trying to figure out where it**
 38 **was coming from, I looked at my hands, and notice that the entire face of my watch**
 39 **had separated in a jagged line from the rest of the casing, and what had at first**
 40 **appeared to be a scratch was actually a cut in my back caused by said edge slicing**
 41 **me open when I rubbed my back a minute earlier... (URL:**
 42 https://www.reddit.com/r/AppleWatch/comments/6twy0i/series_2_apple_watch_gets_sw

ollen battery causes/) (emphasis added)

66. On or about April 13, 2018, Apple acknowledged a swelling battery in certain Series 2 Watches via an internal document distributed to Apple Stores and Apple Authorized Service Providers.²⁷ In response, Apple extended its Limited Warranty for qualifying Series 2 Watches from one year to three years.²⁸ Additional internal documents distributed to Apple Stores and Apple Authorized Service Providers in August 2018 stated that: “Apple has determined that under certain conditions, some Apple Watch Series 2 devices may not power on or they may experience an expanded battery.”²⁹ Other sources available to Apple, and, upon information and belief, that Apple accessed and viewed, stated unequivocally: “A swollen battery can prevent an Apple Watch from powering on or cause the display to burst open.”³⁰

67. Apple began selling its Third Generation (Series 3) Watch in September 2017. Shortly thereafter, consumers who purchased the Series 3 Watch reported that the screens on their Watches were cracking, shattering, or detaching from the body of their Watches, and lodged complaints about the Series 3 Watches with Apple in the ways described above.

68. Apple monitors the Apple Watch “Support Communities” forum. The following quotations are representative of consumers’ experiences with the Series 3 Watch:

- Navneet7935 (Series 3), posted November 27, 2017: **titled “apple watch screen pop up” - my watch is in warrenty is this a battery swollen problem and its been only 2 weeks since i have purchased this watch** (URL: <https://discussions.apple.com/thread/8178472>)
 - Traceyhincks (Series 3), posted January 3, 2018: My series 3 watch screen cracked right around the edge and **the face popped out...I was sitting at my desk**, not moving didn't bang it on anything...I'd had the watch for one week...My husband contacted apple, they said send it to the repairer, we are not close to an Apple Store...So end result from Apple is that it was my fault and it's going to cost \$385 to fix it...After spending \$600 to buy it, and me wearing it for a week, it's turning into a very expensive watch...They have flatly refused to warrant it.... (URL: <https://discussions.apple.com/thread/8223086?page=41>)

²⁷ <https://www.macrumors.com/2018/04/14/apple-watch-s2-swollen-battery-service-policy/>

28 *Id.*

29 *Id.*

30 *Id.*

1 (emphasis added).

- 2 • Njsurfmaster (Series 3), posted March 15, 2018: I have the same problem with my
 3 Series 3 watch. I purchased it in September 2017. **The screen around the entire**
 4 **edge cracked and separated. It happened while sitting in a chair watching**
 5 **TV.** I didn't bang it in any way. No visible scratches or any kind of damage on the
 6 watch...I took it to an Apple Store and they said it looked like a swollen battery
 7 and wrote it up that way. Apple denied it and is charging me \$289+tax to
 8 repair...There is no doubt in my mind there is a problem with these watches.
 9 (URL: <https://discussions.apple.com/thread/8223086?page=41>) (emphasis
 10 added).
- 11 • THHV (Series 3), posted March 28, 2018: **My watch was fine the night before**
 12 **but after charging it for the night, when I put it back on there was a**
 13 **continuous hairline crack that wrapped around 2 sides of the screen on the**
 14 **bevel.** I'm positive that it happened when charging off the wrist as it's very
 15 noticeable when swiping on the screen. My finger picks up the scratch when
 16 sliding my finger over it. I noticed it the second I put the watch on. Apple Store
 17 advised that it was covered under warranty as it was likely related to a swollen
 18 battery or other factory defect. They sent it for repair under warranty but the
 19 repair facility wants over \$250 to fix the screen because it is cracked &
 20 considered physical damage... **THIS IS WHY I SENT IT IN.** Obviously it's
 21 cracked, the Apple Store saw this, verified it and advised it was covered under
 22 warranty. There are zero signs of wear and tear. No case damage, scratched, etc.
 23 (URL: <https://discussions.apple.com/thread/8336776?page=2>) (emphasis added).
- 24 • Megan781 (Series 3), posted on May 16, 2018: **My son's watch face popped off**
 25 **suddenly. It looks like the battery swelled?! The jagged edge cut his leg!**
 26 When I searched it there seemed to be a similar issue with Series 2.. Has anyone
 27 had a similar experience?! (URL: <https://discussions.apple.com/thread/8393594>)
 28 (emphasis added)
- MacBMcT (Series 3), posted on June 19, 2018: **Has anyone else received a**
 1 laceration requiring medical attention due to their Apple Watch face
 2 spontaneously separating from the watch body? The watch in question is less
 3 than 6 months old, Series 3 (with GPS + Cellular), and not previously dropped, hit
 4 or otherwise damaged. (URL: <https://discussions.apple.com/thread/8432476>)
 5 (emphasis added).
- WI-Pat (Series 3), posted July 26, 2018: I received my Apple Watch this past
 1 Christmas as a gift (2017) (MQL42LL/A APPLE WATCH N+ S3 42 SG A).
 2 This past week while enjoying an evening with friends, I placed my right hand
 3 over my watch. I felt something sharp along the glass edge, on the side near the
 4 buttons. After touching it a bit, the whole glass face just lifted up, and sharp
 5 edges all the way around the face. When I took the watch off, **I cut my hand in**
 6 **two places....edges are REALLY sharp!** I know for a fact I have never bumped
 7 my Apple watch against anything. So I read some blog accounts of other people
 8 having this issue. Has Apple honored their watch warranty for anyone? I read
 9 something about a swollen battery can cause the face to crack, maybe that's what
 10 happened to me? I live over a 100 miles from the nearest Apple Store, so I don't
 11 want the travel there for them to tell me to just "go buy a new watch!". Can

1 anyone help me? (URL: <https://discussions.apple.com/thread/8477746>) (emphasis
 2 added)

- 3 • Danunda (Series 3), posted July 31, 2018: I'm gauging whether my recent run in
 4 with Apple is an anomaly. **I wore my apple watch on my left wrist. Recently**
 5 **woke up from a deep sleep to find my right index finger had been sliced open**
 6 **during the night - pretty gory, I'll save you the details. Anyway, it turns out**
 7 **the watch glass had a hair line fracture all the way around the face. Hardly**
 8 **noticeable to the eye, but sharp enough to slice through skin while I slept.**
 9 **Bizarre and gruesome.** Fast forward to taking it in to the local apple store - they
 10 told me it would cost \$285 to fix the glass. 1. This has to be a design fault. Watch
 11 glass shouldn't break that easily - retracing my steps, I have no idea when/how
 12 this could have happened. It can't have been a particularly traumatizing bump. 2.
 13 **This was clearly dangerous. Glass that can cut that deeply and while**
 14 **sleeping!?** Whaaa..3. The phone NEW was \$420, so I'm finding it impossible to
 15 justify \$285. I'm certain this has to be a flaw in the glass itself, but the "factory"
 16 will determine whether the limited warranty covers it. Let's see. Anyone else dealt
 17 with this? What options do we have? I loved my watch, but I can't justify the cost.
 18 (URL: <https://discussions.apple.com/thread/8483351>) (emphasis added)
- 19 • Tx2991guy (Series 3), posted December 9, 2018: Caution my watch is 11 months
 20 old, **the screen popped out as I was changing my daughter for bedtime and**
 21 **sliced my right thumb like butter!** I had an older generation that had this issue
 22 after 3 years but was told it was fixed in this newest model!! Move posted on
 23 spoke forum, tried to call zero response. Gonna send this to my local news station
 24 (URL: <https://discussions.apple.com/thread/250012456>) (emphasis added)
- 25 • Latetech (Series 3), posted February 12, 2019: was resting whilst wearing my new
 26 Apple Watch 3. **Looked down and noticed some blood on my wrist because**
 27 **the screen had popped off and scratched my arm.** Arrange through chat with
 28 apple to return for repairs. They've told me not covered and will charged
 £187+vat to fix. The photo they sent of the damaged showed the watch
 seemingly in worse condition than when I sent it. I've challenged apple on this
 and am waiting for a reply. Fortunately I'd taken some pics of the watch before I
 sent it back. Has anyone else experienced this? (URL:
<https://discussions.apple.com/thread/250160260>) (emphasis added)
- 29 • Brookemir (Series 3), posted on August 4, 2019: My Apple Watch series 3 screen
 30 randomly popped off tonight while I was prepping dinner. **I was holding my 4**
 31 **month old baby and my boyfriend reached to hug us and then felt a sharp**
 32 **sting on his hand. We couldn't figure out what had cut him but he was**
 33 **bleeding quite a bit. Turns out, the screen had popped off my watch and was**
 34 **dangling and the glass cut him. I'm just glad it cut him and not my baby**
 35 **since she loves to grab things... but that's super dangerous!** I didn't even hit it
 36 on anything. I was just holding the baby and waiting for the oven to heat up. What
 37 should I do now? I've been reading up and apparently it's a major issue with
 38 series 2 and 3 watches, and many customers have said Apple refuses to even
 39 replace the watches for free. Am I owed compensation if they refuse repairs?
 40 (URL: <https://discussions.apple.com/thread/250534145>) (emphasis added)

1 69. Apple began selling its Fourth Generation (Series 4) Watch in September 2018. Shortly
 2 thereafter, consumers who purchased the Series 4 Watch reported that the screens on their Watches were
 3 cracking, shattering, or detaching from the body of their Watches, and lodged complaints about the
 4 Series 4 Watches with Apple in the manners described above.

5 70. Apple monitors the Apple Watch “Support Communities” forum. The following
 6 quotations are representative of consumers’ experiences with the Series 4 Watch:

- 8 • Kasia.parker (Series 4), posted February 2, 2019: Just happened to me as well.
 9 New Apple Watch 4. [In response to another post about the screen shattering].
 10 (<https://discussions.apple.com/thread/7889589?answerId=250248866022#250248866022>)
- 11 • Wabenny (Series 4), posted February 16, 2019: **After having my Iwatch for 6 days, yes 6 days the screen shattered.** Apple has replied that it’s NOT a factory
 12 defect and not under warranty. The watch was put on a granite countertop along
 13 with my iPhone. After showering I put the watch on and the screen was shattered!
 14 How can a watch face shatter in this manner without being defective to begin
 15 with? Now apple wants to change me \$299.00 to replace their defective product.
 16 (URL: <https://discussions.apple.com/thread/250169406>) (emphasis added).
- 17 • Kmacd2366 (Series 4), posted Aug 10, 2019: iWatch series 4 screen combusted.
 18 **I woke up this morning and found my iWatch series 4 on the charger where I had put it the night before. The screen was combusted.** Has anyone had any
 19 issues with their screens doing this? The watch won’t turn on. I’m assuming it’s
 20 a battery issue. **I’m grateful I wasn’t wearing it.** Trying to seek Apple support
 21 (URL: <https://discussions.apple.com/thread/250547878>) (emphasis added).
- 22 • Richard Stott2 (Series 4), posted Nov 11, 2019: **The screen on my Wife's watch has detached. She is 68 and didn't do anything that would have caused this.** I
 23 read a lot of other posts but not Series 4. The Apple rep mentioned battery
 24 swelling? Have other people got issues with this as I have to wait for a tech
 25 evaluation but I don’t see how that diagnoses faulty glue? Screen repair is
 26 expensive and I’m concerned that my own watch is also at risk. (URL:
 27 <https://discussions.apple.com/thread/250842802>) (emphasis added).
- 28 • Suvit Sharma (Series 4), posted June 30, 2020: **My Apple Watch series 4 screen popped out on its own. After keeping Apple Watch like my own baby It's really frustrating seeing screen popping out.** Watch is out of warranty & I
 29 really don’t understand how Apple product can be so fragile. I need support from
 30 Apple official in this regard. (<https://discussions.apple.com/thread/251533004>)
 31 (emphasis added).
- 32 • Brian7600 (Series 4), posted November 3, 2021: **I have an Apple Watch series 4**

1 stainless, and my screen suddenly detached several months ago. I went to the
 2 Genius Bar and apple claimed there has been no reports of series 4 having
 3 expanding batteries, only series 1, so they wanted more than a year old series 5
 4 would cost to fix it. Fast forward a couple months: I had taken it to a service place
 5 which replaced all of the gaskets and glued the watch face back on. In about a
 6 month the face popped back off. There must be a defect pushing the face off (I
 7 would guess the battery). Has anybody else had this problem with a Series 4
 8 watch? If so, have you found any resolution with Apple? (emphasis added).
 9 (<https://discussions.apple.com/thread/253326839>)

10 71. On or about April 1, 2019, Apple received notice of and later defended a proposed class
 11 action complaint warning that Series 1, 2, and 3 Watches posed “a significant safety hazard to
 12 consumers, as it has caused a number of putative Class members to suffer cuts and burns in connection
 13 with the screens cracking, shattering and/or detaching from the body of the Watches.”³¹

14 72. Apple began selling its Fifth Generation (Series 5) Watch in September 2019. Shortly
 15 thereafter, consumers who purchased the Series 5 Watch reported that the screens on their Watches were
 16 cracking, shattering, or detaching from the body of their Watches, and lodged complaints about the
 17 Series 5 Watches with Apple in the manners described above.

18 73. Apple monitors the Apple Watch “Support Communities” forum. The following
 19 quotations are representative of consumers’ experiences with the Series 5 Watch:

- 20 17 • ColinYu (Series 5), posted on Dec 10, 2019: Possible Manufacturer Defect-Apple
 21 Watch Series 5. **Hello, is it common for an Apple Watch screen to develop
 22 deep gouges and cracks without any impact. I haven’t impacted the screen of
 23 my Apple Watch in anyway but there are already several cracks and
 24 scratches.** (URL: <https://discussions.apple.com/thread/250934270>) (emphasis
 25 added).
- 26 • Cur_Hel (Series 5), posted on Jun 4, 2020: **I have a series 5 and it has cracked
 27 in the corner and along the bottom and side of the screen.** I haven’t dropped it
 28 or banged it. Anyone know where I go for help? (URL:
<https://discussions.apple.com/thread/251429280>) (emphasis added).
- 29 • Einstein2021 (Series 5), posted on Sep 3, 2020: **My Series 5 Apple Watch
 30 screen has cracked and spread with little or no contact?** Can anyone explain
 31 why this has happened? (URL: <https://discussions.apple.com/thread/251758246>)

31 *Priano-Keyser v. Apple, Inc.*, 2:19-cv-09162-DM-MAH (D. N.J. 2019) (Doc. 1, ¶ 9).

1 (emphasis added).

2 74. Apple began selling its Sixth Generation (Series 6 and SE) Watch in September 2020.
 3 Shortly thereafter, consumers who purchased the Series 6 and SE Watch reported that the screens on
 4 their Watches were cracking, shattering, or detaching from the body of their Watches, and lodged
 5 complaints about the Series 6 and SE Watches with Apple in the manners described above.

6 75. Apple monitors the Apple Watch “Support Communities” forum. The following
 7 quotations are representative of consumers’ experiences with the Sixth Generation Watch:
 8

- 9 • Sam-jayne1 (Series 6), posted on Dec 16, 2020: **My 2 month old series 6 watch**
 10 **has got 2 massive cracks across it and coming away from the edge and I have**
 11 **NOT dropped or bashed it!** I know there was a problem with series 2 and three
 12 with this spontaneous cracking has anyone else experienced it with a new series
 13 6? (URL: <https://discussions.apple.com/thread/252184825>) (emphasis added).
- 14 • Cyiwatch (Series 6), posted on August 31, 2021: This is a new series 6 watch and
 15 it’s just few months old... **But I don’t know why screen is popped up?!** (URL:
 16 <https://discussions.apple.com/thread/253100938>) (emphasis added).
- 17 • chonsy42 (Series 6), posted on November 9, 2021: I bought my watch last year
 18 and had no problem whatsoever **today my screen just popped off** (URL:
 19 <https://discussions.apple.com/thread/253100938>) (emphasis added).

20 76. Upon information and belief, thousands of consumers have made warranty claims over
 21 the years associated with the Defect and Apple monitors, tracks, reviews, evaluates, and responds to
 22 those claims.

23 77. Upon information and belief, Class members regularly sent Watches manifesting the
 24 Defect to Apple’s Service Center and/or its retail stores and/or an Apple Authorized Service Provider
 25 (such as Best Buy) at least as early as April 2016, the data associated with all of which Apple also
 26 monitors, tracks, reviews, evaluates, and analyzes.

27 78. Based on the frequency and regularity of the manifestation of the Defect, as evidenced
 28 by, among other things, the regular and pervasive complaints of Class members and their requests for
 repair through Apple’s Service Center and retail stores and/or Apple Authorized Service Providers (such
 as Best Buy), the pre-release testing conducted by Apple would have revealed the Defect.

79. Given the admissions in Apple’s patent applications and Apple’s battery testing program,

1 Apple was keenly aware of the Defect prior to bringing the First Generation to market on or after April
 2 2015. In addition to the patent applications and battery testing program, as a result of the customer
 3 complaints about the Defect and Apple's extension of its Limited Warranty for its First Generation
 4 Watches, Apple was keenly aware of the Defect prior to bringing Series 1 through Series 6 and Series
 5 SE Watches to market on and after September 2016. Further, because Apple knew its Watch screens
 6 were made either of Ion-X glass (aluminum models) or sapphire crystal glass (stainless steel and
 7 titanium models), that each have a razor-sharp edge on all four sides, and that after a failure the exposed
 8 screen remains secured to the back of the Watch (and therefore within close proximity to a consumer's
 9 body) by means of the tiny flexible wire, Apple had notice that the Defect was an unreasonable safety
 10 hazard and could cause physical injury to consumers before it brought any of the Watches to market.

11 80. As the above posts demonstrate, owners of defective Apple Watches are faced with
 12 unenviable and expensive options: They can pay anywhere between \$159 and \$2,800 (depending on the
 13 Series and model) to repair an already expensive Watch; they can purchase AppleCare+ for at least \$49
 14 (and then pay an additional \$69-\$79 service fee for each incident);³² they can purchase a new Apple
 15 Watch; or they can simply not use their Watch. Under any option, consumers must either pay
 16 significantly more for the continued use of an already expensive Watch or be deprived of its use entirely.
 17 Moreover, if the consumer either repairs his or her Watch or purchases a new Watch, he or she would
 18 still run the risk of future harm from operational failure and the unreasonable safety hazard as the new or
 19 repaired Watch would continue to contain the same Defect described herein.

20 81. Despite knowing that the Watch was defective and having ample opportunity to fix or at
 21 the very least accurately describe to consumers the Defect in the Apple Watch, Apple uniformly failed
 22 to disclose to any Plaintiff or Class member before purchase that the Watch is defective.

23 82. As set forth in this Complaint, Apple had notice of and/or knew of the Defect and that the
 24 Defect posed an unreasonable safety hazard to consumers before each Plaintiff purchased his or her

25
 26 32 <https://www.apple.com/shop/product/S5398LL/A/applecare-for-apple-watch-and-apple-watch-nike>
 27 and <https://www.apple.com/support/products/watch/> and
 28 <https://support.apple.com/watch/repair/service/pricing> (previous versions of this website included the
\$2,800 pricing for repairs of First Generation watches).

1 Watch.

2 83. Each Plaintiff and Class member was unaware of the Watch's defective nature before
 3 purchasing it. Had Apple disclosed the Defect, each Plaintiff and Class member would not have
 4 purchased a Watch, would not have paid the full retail price for it, or would have returned it during the
 5 buyer remorse period, which ranges from 14 to 30 days depending on the seller.

6

7 **The Limited Warranty For Apple Watches**

8

9 84. Apple provides a Limited Warranty for all purchasers of an Apple Watch, which covers
 10 the "product against manufacturing defects beginning on the original purchase date." The Limited
 11 Warranty is one year for most models but is two years for the Hermès and Edition models.

12 85. Upon information and belief, apart from distinctions in temporal duration, the terms of
 13 Apple's Limited Warranty are the same for all Apple Watch models and, in relevant part, provides:

14 **WHAT IS COVERED BY THIS WARRANTY?**

15

16 Apple Inc. of One Apple Park Way, Cupertino, California, U.S.A. 95014
 17 ("Apple") warrants the Apple-branded hardware product and Apple-
 18 branded accessories contained in the original packaging ("Apple Product")
 19 against defects in materials and workmanship when used normally in
 20 accordance with Apple's published guidelines for a period of ONE (1)
 21 YEAR from the date of original retail purchase by the end-user purchaser
 22 ("Warranty Period"). Apple's published guidelines include but are not
 23 limited to information contained in technical specifications, user manuals
 24 and service communications.

25 **WHAT IS NOT COVERED BY THIS WARRANTY?**

26

27 This Warranty does not apply to any non-Apple branded hardware products
 28 or any software, even if packaged or sold with Apple hardware. This does
 29 not affect your rights under applicable consumer law. Manufacturers,
 30 suppliers, or publishers, other than Apple, may provide their own warranties
 31 to you – please contact them for further information. Software distributed
 32 by Apple with or without the Apple brand (including, but not limited to
 33 system software) is not covered by this Warranty. Please refer to the
 34 licensing agreement accompanying the software for details of your rights
 35 with respect to its use. Apple does not warrant that the operation of the
 36 Apple Product will be uninterrupted or error-free. Apple is not responsible

1 for damage arising from failure to follow instructions relating to the Apple
 2 Product's use.

3 **This Warranty does not apply:** (a) to consumable parts, such as
 4 batteries or protective coatings that are designed to diminish over time,
 5 unless failure has occurred due to a defect in materials or
 6 workmanship; (b) to cosmetic damage, including but not limited to
 7 scratches, dents and broken plastic on ports unless failure has occurred
 8 due to a defect in materials or workmanship; (c) to damage caused by
 9 use with a third party component or product that does not meet the
 10 Apple Product's specifications (Apple Product specifications are
 11 available at www.apple.com under the technical specifications for each
 12 product and also available in stores); (d) to damage caused by accident,
 13 abuse, misuse, fire, earthquake or other external cause; (e) to damage
 14 caused by operating the Apple Product outside Apple's published
 15 guidelines; (f) to damage caused by service (including upgrades and
 16 expansions) performed by anyone who is not a representative of Apple
 17 or an Apple Authorized Service Provider ("AASP"); (g) to an Apple
 18 Product that has been modified to alter functionality or capability
 19 without the written permission of Apple; (h) to defects caused by
 20 normal wear and tear or otherwise due to the normal aging of the Apple
 21 Product, (i) if any serial number has been removed or defaced from the
 22 Apple Product, or (j) if Apple receives information from relevant
 23 public authorities that the product has been stolen or if you are unable
 24 to deactivate passcode-enabled or other security measures designed to
 25 prevent unauthorized access to the Apple Product, and you cannot
 26 prove in any way that you are the authorized user of the product (e.g.
 27 by presenting proof of purchase) (emphasis in original).³³

28. For Hermes and Edition models, Apple's Limited Warranty is substantially the same in
 1 all relevant parts except that the duration is extended to two years.³⁴

2 87. Apple's website indicates that an Apple Watch is considered "out of warranty" when it is:
 3 (1) "beyond the eligible warranty term"; (2) "has an issue that's not covered under warranty or consumer
 4 law, such as accidental damage"; or (3) "service isn't covered by an AppleCare plan.

5 88. If an Apple Watch screen "breaks accidentally, [consumers] can replace [the] Apple
 6 Watch for an out-of-warranty fee." The out of warranty Apple Watch repair service starts at \$159 and
 7 can cost as much as \$2,800 depending on the Series and model Watch that needs repair.³⁵

27 ³³ <https://www.apple.com/legal/warranty/products/warranty-us.html> (emphasis in original)

28 ³⁴ <https://www.apple.com/legal/warranty/products/warranty-edition-us.html>

³⁵ <https://support.apple.com/watch/repair/service/pricing>

89. The Limited Warranty gives Apple sole discretion to repair, replace, or refund the purchase price of a defective Watch. Apple has refused to carry out its obligations under this warranty. When a consumer submits a warranty claim relating to the Defect, Apple often denies coverage, blames the consumer for “damaging” the Watch with no valid justification, and/or fails to provide an effective repair (in that the repaired Watch still contains the Defect which can cause the screen to detach, shatter, or crack again).

90. Apple's refusal to provide an effective repair shifts the cost and burden of the Defect to consumers.

91. Where Apple has agreed to repair or replace defective Watches, including through the Screen Replacement Program (described below), the repairs and replacements do not fix the Defect. As a result, consumers have experienced repeated Watch failures and remain exposed to material and unreasonable safety hazards.

Screen Replacement Program

92. On August 30, 2019, Apple announced a Screen Replacement Program only for Aluminum Models of Apple Watch Series 2 and Series 3 (“Screen Replacement Program”), explaining: “Apple has determined that, under very rare circumstances, a crack may form along the rounded edge of the screen in aluminum models of an Apple Watch Series 2 or Series 3. The crack may begin on one side and then may continue around the screen as shown in the images below.”³⁶

93. As part of the Screen Replacement Program, Apple agreed that it or an Authorized Service Provider “will replace the screen on eligible Apple Watch units that exhibit this type of crack, free of charge.”

94. Apple limited the Screen Replacement Program to the following models³⁷:

³⁶ <https://support.apple.com/screen-replacement-program-apple-watch-series-2-3>

³⁷ <https://support.apple.com/screen-replacement-program-apple-watch-series-2-3>

Series and Model	Case Sizes	Color and Material	Sold Dates
Apple Watch Series 2	38mm and 42mm	Space gray, gold, rose gold, and silver aluminum	September 2016 - September 2017
Apple Watch Nike+ Series 2	38mm and 42mm	Space gray and silver aluminum	October 2016 - October 2017
Apple Watch Series 3 (GPS)	38mm and 42mm	Space gray, gold, and silver aluminum	September 2017 - September 2019
Apple Watch Series 3 (GPS+ Cellular)			
Apple Watch Nike+ Series 3 (GPS)	38mm and 42mm	Space gray and silver aluminum	October 2017 - September 2019
Apple Watch Nike+ Series 3 (GPS+ Cellular)			

95. The Screen Replacement Program covers eligible aluminum models of Apple Watch Series 2 and Series 3 for three years after the first retail sale of the unit or one year from the start date of the Screen Replacement Program, whichever is longer.³⁸ Apple also stated that the Screen Replacement Program does not extend the standard warranty coverage on any Watch.³⁹

96. Apple does not claim to have implemented any design changes in the replacement Watches. The repairs offered under the Screen Replacement Program are limited to “replace[ment of] the screen on eligible Apple Watch units that exhibit” a particular type of crack.⁴⁰ Replacements provided under the Screen Replacement Program have consistently failed again.

97. Through its Screen Replacement Program, Apple forces many consumers to spend time and effort undergoing Watch repairs that Apple knows will not fix the underlying Defect.

98. When Apple agrees to replace a screen on an eligible Apple Watch, the Watch remains

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

1 defective and the new screen is susceptible to the same Defect as the old screen. The Screen
 2 Replacement Program does nothing to address the root cause of the failure.

3 99. Despite public denials, Apple knows that the Watches are defective and that its
 4 replacement of screens on those defective Watches will not resolve the underlying problem.

5 100. Apple's Screen Replacement Program does not offer any relief to owners of any model
 6 Watch except those described above.

7 101. Apple's Screen Replacement Program does not assure that Plaintiffs and other consumers
 8 will be fully compensated for their out-of-pocket expenses. Apple does not offer refunds to consumers
 9 who have already paid for repairs or replacements. Additionally, after substantially limiting the models
 10 of Watch that are eligible for the Screen Replacement Program in the first place, Apple also requires that
 11 those Watches have a specific type of crack in order for it to be eligible for the Screen Replacement
 12 Program.⁴¹

13 102. As a result of Apple's failure to provide an effective remedy, consumers (including
 14 certain Plaintiffs and Class members) have been told to purchase new Watches or pay Apple's expensive
 15 service fees for repairs in order to have a functioning watch.

16 103. In sum, the Screen Replacement Program fails to cure the underlying defect in the
 17 Watches. Each iteration of Apple's Watch contains a design defect that renders the Watch prone to fail.
 18 The Screen Replacement Program does nothing to address these underlying design problems. Watches
 19 repaired through the Screen Replacement Program continue to fail at a high rate.

20 **Apple's Failure to Remedy the Defect**

21 104. Apple has flatly refused to acknowledge the existence of the Defect in any Watch,
 22 including every watch purchased by Plaintiffs and Class members. Nevertheless, Apple's patent
 23 applications, consumers' complaints at Apple Stores, to Apple Support, to Authorized Service Providers,
 24 online via Apple's "Support Communities" forum, other online forums, and media coverage, etc. leave
 25 no doubt that Apple is fully aware of the Defect and that it is a safety hazard that can cause personal
 26 injuries. Even still, Apple has provided no notice of the Defect or the unreasonable safety hazard to

27
 28 ⁴¹ *Id.*

1 consumers.

2 105. Apple has failed to disclose the material and unreasonable safety Defect to consumers,
 3 and, when presented with defective Watches, has insisted on numerous occasions that the damage
 4 caused by the Defect is the fault of consumers and has refused to repair or replace their Watches free of
 5 charge, as required under the Limited Warranty, implied warranties, and otherwise. These are material
 6 facts about which consumers would reasonably expect to receive notice. Had Plaintiffs and Class
 7 members known about the Defect and, further, that Apple would refuse to remedy the Defect under its
 8 Limited Warranty or otherwise, they would not have bought the Watches, or would have paid less to
 9 purchase them.

10 106. Although aware of the Defect in the Watches, Apple has engaged in the following acts
 11 and omissions:

- 12 a) failing to disclose, prior to, at and after the time of purchase and attempts to repair, any
 13 and all known material facts or material defects associated with the Watches, including
 14 the associated repair costs, as well as the Defect in the Watches that existed during their
 15 normal and/or expected range of operation;
- 16 b) failing to disclose prior to, at, and after the time of purchase that the Watches were not in
 17 good working order, were defective, and were not fit for their intended purposes;
- 18 c) failing to disclose or actively concealing the fact that the Watches were and are defective,
 19 despite the fact that Apple learned of such defects through pre-release and/or other
 20 testing, repair requests, and consumer complaints soon after Apple began selling the
 21 Watches; and
- 22 d) failing to disclose that the Defect poses significant safety concerns and can cause
 23 personal injuries.

24 107. When Plaintiffs and Class members have visited Apple Stores (or Authorized Service
 25 Providers) and/or contacted Apple Support to complain about the Defect, Apple has concealed the true
 26 nature of the Defect by failing to acknowledge the Defect, often failing to make free repairs under its
 27 Limited Warranty or otherwise, and often insisting that the detached, shattered or cracked screen is the
 28 result of Plaintiffs' and other Class members' actions.

1 108. Apple has not recalled the Watches to repair the Defect and has not offered its customers
 2 a suitable repair or replacement free of charge. Indeed, Apple's conduct demonstrates that its internal
 3 policy is to deny the existence of a Defect and to instead claim the Defect is the result of "accidental
 4 damage" caused by the consumer, and thus not covered by its Limited Warranty.

5 109. As a result of the issues caused by the Defect during foreseeable normal use, owners of
 6 the Watches are unable to use them as they were intended and expected to be used.

7 110. A reasonable consumer expects and assumes that, when he or she purchases a Watch
 8 purportedly designed for active wear and use, the Watch screen will not spontaneously crack, detach, or
 9 shatter when it is being used within its normal and/or expected range of operation. A reasonable
 10 consumer also expects that the Watch will not be an unreasonable safety hazard.

11 111. In addition to repair or replacement costs associated with remedying the Defect, Apple
 12 has a duty to disclose the defective nature of the Watches because Apple has exclusive knowledge of or
 13 access to all the material information and has known these facts were not reasonably discoverable by
 14 Plaintiff or the Class members, and because the Defect poses a material and unreasonable safety hazard.

PLAINTIFF-SPECIFIC ALLEGATIONS

Plaintiffs Chris Smith and Cheryl Smith

17 112. On or about December 15, 2017, Plaintiff Cheryl Smith purchased a new Series 3 GPS
 18 Aluminum 42mm Apple Watch (Serial No. FH7VQBEYJ5X4) from Best Buy in Daphne, Alabama for
 19 \$359.00 plus tax and gifted it to her son, Chris Smith, on December 25, 2017.

20 113. Apple had knowledge of the Defect, its propensity to cause injury, and its existence in
 21 Series 3 Watches before Plaintiff Cheryl Smith made her purchase on December 15, 2017.

22 114. Prior to purchasing an Apple Watch, Plaintiff Cheryl Smith reviewed the packaging for
 23 the Series 3 Watch.

24 115. Upon receipt of the Watch on December 25, 2017, with at least 4 days remaining in
 25 which the Watch could be returned, Plaintiff Chris Smith reviewed the packaging, User Guide, and other
 26 set up and pairing information that came with the Watch. Prior to his receipt of the Watch, Plaintiff
 27 Chris Smith saw advertisements and promotional materials in which Apple touted the health, fitness, and
 28 safety features of the Series 3 Watch.

116. On September 8, 2020, Plaintiff Chris Smith was wearing his Watch on his left wrist while sitting in a golf cart. As Plaintiff Chris Smith reached down from the steering wheel to place the golf cart in motion, a detached screen on his Apple Watch severely sliced the underside of Plaintiff's forearm, cutting a vein, and resulting in substantial personal injury. The watch was no longer operational.

117. At all times prior to Plaintiff Chris Smith's injury, the watch was maintained as recommended by Apple. The watch was free from any cracks or other damage to the screen face or surrounding area. It only had a few cosmetic scratches. The watch screen had never detached prior to his injury on September 8, 2020. It was in like-new condition with no prior damage when the Defect manifested itself.

118. On or about October 14, 2020, Plaintiff Chris Smith submitted a claim to Apple via checkcoverage.apple.com pursuant to its Limited Warranty, but his claim was denied. Thereafter, on or about December 14, 2020, Plaintiff Chris Smith brought his watch to the Daphne, Alabama Best Buy store, an Apple Authorized Service Provider, to inquire about coverage for the detached screen. He also submitted a claim to them pursuant to Apple's Screen Replacement Program prior to the coverage expiration, but his Screen Replacement Program claim was denied by Best Buy acting as Apple's authorized representative. The service fee to repair Plaintiff Chris Smith's watch is \$159.00.⁴²

119. If Plaintiffs decide to have the repair done, they still run the risk of future harm (as do other members of the Class) because the “repaired” watch will have the same Defect described herein.

120. Had Plaintiffs Chris Smith and Cheryl Smith been aware of the existence of the Defect, Cheryl Smith would not have purchased the watch or would have paid significantly less for it or Cheryl and/or Chris Smith would have returned it for a refund. As a result of Apple's conduct, Plaintiff Chris Smith and Plaintiff Cheryl Smith have been injured.

Plaintiff Karen Smithson

121. On or about December 18, 2016, Plaintiff Karen Smithson purchased a Series 2 Stainless Steel 38mm Apple Watch (Serial No. FHLTP06ZHDXL) from the Apple Store in San Francisco,

⁴² <https://support.apple.com/watch/repair/service/pricing>

1 California for \$1,049.00 plus tax. She reviewed the product packaging, the User Guide, and the
 2 information provided by Apple during the set-up and pairing process.

3 122. Apple had knowledge of the Defect, its propensity to cause injury, and its existence in
 4 Series 2 Watches before Plaintiff Karen Smithson made her purchase on December 18, 2016.

5 123. Prior to purchasing an Apple Watch, Plaintiff Karen Smithson saw advertisements and
 6 promotional materials in which Apple touted the health, fitness, and safety features of the Watch. She
 7 reviewed the promotional material on Apple's website, including Apple's statements about the health,
 8 fitness, and safety features and capabilities of the Watch. She also recalls seeing advertisements for the
 9 Apple Watch.

10 124. With several days remaining in which the Watch could be returned, Plaintiff Smithson
 11 reviewed the packaging, User Guide, and other set up and pairing information that came with the Watch.

12 125. Had Plaintiff Karen Smithson been aware of the existence of the Defect, she (1) would
 13 not have purchased a Watch, (2) would have paid substantially less for it, or (3) would have returned it
 14 for a refund. As a result of Apple's conduct, Plaintiff Karen Smithson has suffered injury.

15 *Plaintiff Jason Roush*

16 126. In November 2017, Plaintiff Jason Roush purchased a new Series 2 Nike Edition
 17 Aluminum 42mm Apple Watch (Serial No. FHLTK0HRHF1N) from Best Buy in Akron, Ohio for
 18 approximately \$350.00 plus tax.

19 127. Apple had knowledge of the Defect, its propensity to cause personal injury, and its
 20 existence in Series 2 Watches before Plaintiff Jason Roush made his purchase in November 2017.

21 128. Prior to purchasing an Apple Watch, Plaintiff Jason Roush saw advertisements and
 22 promotional materials both in store and online in which Apple touted the health, fitness, and safety
 23 features of the Watch. He reviewed the promotional material on Apple's website, including Apple's
 24 statements about the health, fitness, and safety features and capabilities of the Series 2 Watch. He also
 25 reviewed promotional materials on Bestbuy.com, Verizon.com, Overstock.com and in-store at Best Buy
 26 and Walmart. He also watched television advertisements promoting the Watch.

27 129. With several days remaining in which the Watch could be returned, Plaintiff Roush
 28 reviewed the packaging, User Guide, and other set up and pairing information that came with the Watch.

130. On April 30, 2021, the screen on Plaintiff Jason Roush's watch suddenly and unexpectedly detached from the watch's body. When Plaintiff Roush looked at the watch, he observed that the screen had become partially detached from the rest of the watch. The watch was no longer operational.

131. Shortly thereafter, Plaintiff Roush contacted Apple by telephone. Apple refused to cover the repair under Apple's Limited Warranty or Screen Replacement Program. Plaintiff has been unable to use his watch since that time.

132. The service fee to repair Plaintiff Roush's watch is \$229.⁴³

133. If Plaintiff decides to have the repair done, he still runs the risk of future harm (as do other Class members) because the “repaired” watch will have the same Defect described herein.

134. At all times prior to the failure of Plaintiff Jason Roush's watch, the watch was maintained as recommended by Apple. The watch was free from any cracks or other damage to the screen face or surrounding area. It only had a few cosmetic scratches. The watch screen had never detached prior to the incident on April 30, 2021. It was in like-new condition with no prior damage when the Defect manifested itself.

135. Had Plaintiff Jason Roush been aware of the existence of the Defect, he (1) would not have purchased a Watch, (2) would have paid substantially less for it, or (3) would have returned it for a refund. As a result of Apple's conduct, Plaintiff Jason Roush suffered injury.

Plaintiff Corey Pomroy

136. In December 2018, Plaintiff Corey Pomroy purchased a new Series 3 Nike Edition Aluminum 42mm Apple Watch (Serial No. G99XF4VHJ6GP) online and had it shipped to Maryland for approximately \$300.00 plus tax.

137. Apple had knowledge of the Defect, its propensity to cause injury, and its existence in Series 3 Watches before Plaintiff Corey Pomroy made his purchase in December 2018.

138. Prior to purchasing an Apple Watch, Plaintiff Corey Pomroy saw advertisements and promotional materials in which Apple touted the health, fitness, and safety features of the Watch. He

⁴³ <https://support.apple.com/watch/repair/service/pricing>

reviewed promotional material, including Apple's statements about the health, fitness, and safety features and capabilities of the Series 3 Watch.

139. With several days remaining in which the Watch could be returned, Plaintiff Pomroy reviewed the packaging, User Guide, and other set up and pairing information that came with the Watch.

140. Approximately two weeks after his original purchase, in January 2019, the screen on Plaintiff Corey Pomroy's watch suddenly and unexpectedly detached from the watch's body. When Plaintiff Pomroy looked at the watch, he observed that the screen had become partially detached from the rest of the watch. The watch was no longer operational.

141. Shortly thereafter, Plaintiff Pomroy contacted Apple. Apple refused to cover the repair under Apple's Limited Warranty or Screen Replacement Program, explaining to Plaintiff Pomory that this does not happen and accusing him of having done something to the watch. Plaintiff has been unable to use his watch since that time.

142. The service fee to repair Plaintiff Pomroy's watch is \$229.⁴⁴

143. If Plaintiff decides to have the repair done, he still runs the risk of future harm (as do other Class members) because the “repaired” watch will have the same Defect described herein.

144. At all times prior to the failure of Plaintiff Corey Pomroy's watch, the watch was maintained as recommended by Apple. The watch was free from any cracks or other damage to the screen face or surrounding area. It only had a few cosmetic scratches. The watch screen had never detached prior to the incident in January 2019. It was in like-new condition with no prior damage when the Defect manifested itself.

145. Had Plaintiff Corey Pomroy been aware of the existence of the Defect, he (1) would not have purchased a Watch, (2) would have paid substantially less for it, or (3) would have returned it for a refund. As a result of Apple's conduct, Plaintiff Corey Pomroy suffered injury.

CLASS ACTION ALLEGATIONS

146. Pursuant to Federal Rules of Civil Procedure 23(a), (b)(1), (b)(2), (b)(3), and (c)(4),

⁴⁴ <https://support.apple.com/watch/repair/service/pricing>

1 Plaintiffs seek certification of the following nationwide Class (the “Class” or the “Nationwide Class”):
2

3 **All natural persons who purchased, other than for resale, any model**
4 **First Generation, Series 1, Series 2, Series 3, Series 4, Series 5, Series**
5 **6, or Series SE Apple Watch (“Class Watches” or “Watches”) and**
6 **who made such purchase in the United States (including the District**
7 **of Columbia) for personal, consumer, and/or household use.**

8 **Nationwide Internet Subclass**

9 All persons who purchased, other than for resale, via Apple’s website or Apple
10 Store App, a Class Watch.

11 **California Subclass**

12 All persons who purchased, other than for resale, within California, a Class
13 Watch.

14 **Maryland Subclass**

15 All persons who purchased, other than for resale, within Maryland, a Class
16 Watch.

17 **Ohio Subclass**

18 All persons who purchased, other than for resale, within Ohio, a Class Watch.

19 **Alabama Subclass**

20 All persons who purchased, other than for resale, within Alabama, a Class
21 Watch.

22 147. Excluded from the Classes are Defendant; any parent, affiliate, or subsidiary of
23 Defendant; any entity in which Defendant has a controlling interest; Defendant’s officers or directors; or
24 any successor or assign of Defendant. Also excluded are any Judge or court personnel assigned to this
25 case and members of their immediate families.

26 148. Plaintiffs hereby reserve the right to amend or modify the class definitions with greater
27 specificity or division after having had an opportunity to conduct discovery.

28 149. **Numerosity. Fed. R. Civ. P. 23(a)(1).** Consistent with Rule 23(a)(1), the Class is so
numerous that joinder of all members is impracticable. While Plaintiffs do not know the exact number
of Class members, Plaintiffs believe the Class and the Subclasses are comprised of millions of members.
Class members may be identified through objective means, including through Defendant’s records.
Class members may be notified of the pendency of this action by recognized, Court-approved notice
dissemination methods, which may include U.S. mail, electronic mail, internet postings, social media,

1 and/or published notice.

2 **150. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3).** Consistent with Rule 23(a)(2) and
 3 with 23(b)(3)'s predominance requirements, this action involves common questions of law and fact as to
 4 all Class members, which predominate over any questions affecting individual Class members. Such
 5 questions of law and fact common to the Class include, but are not limited to:

- 6 a. Whether the Apple Watch was defective at the time of sale;
- 7 b. Whether the Defect poses a material safety hazard to consumers;
- 8 c. Whether the Defect poses an unreasonable safety hazard to consumers;
- 9 d. Whether the Defect substantially impairs the value of the Apple Watch;
- 10 e. Whether Apple knew of the Defect but continued to promote and sell the Apple
 Watch without disclosing the Defect or its consequences to consumers;
- 11 f. Whether a reasonable consumer would consider the Defect and its consequences
 important to the decision whether to purchase an Apple Watch;
- 12 g. Whether Apple breached implied warranties connected with the Apple Watch and
 the Magnuson-Moss Act;
- 13 h. Whether Apple's representations and omissions relating to the Apple Watch and the
 Defect were likely to deceive a reasonable consumer;
- 14 i. Whether Apple acted unlawfully, unfairly, and/or fraudulently in violation of
 California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*;
- 15 j. Whether Plaintiffs and Class members overpaid for their Apple Watch as a result of
 the Defect;
- 16 k. Whether Plaintiffs and Class members are entitled to equitable relief, including
 restitution and injunctive relief; and
- 17 l. Whether Plaintiffs and Class members are entitled to damages or other monetary
 relief, and if so, in what amount.

25 **151. Typicality. Fed. R. Civ. P. 23(a)(3).** Consistent with rule 23(a)(3), Plaintiff's claims are
 26 typical of the claims of the members of the Class. Apple's common course of conduct in violation of law
 27 as alleged herein has caused Plaintiff and Class members to sustain the same or similar injuries and
 28 damages. Plaintiff's claims are thereby representative of and coextensive with the claims of the Class.

1 152. **Adequacy. Fed. R. Civ. P. 23(a)(4).** Consistent with Rule 23(a)(4), Plaintiffs are
 2 adequate representatives of the Class because Plaintiffs are members of the Class and are committed to
 3 pursuing this matter against Defendant to obtain relief for the Class. Plaintiffs have no conflicts of
 4 interest with Class members. Plaintiffs' Counsel are competent and experienced in litigating consumer
 5 class actions, including product liability matters. Plaintiffs intend to vigorously prosecute this case and
 6 will fairly and adequately protect the interests of the Class. Plaintiffs' claims arise out of the same
 7 common course of conduct giving rise to the claims of the other members of the Class. Plaintiffs'
 8 interests are coincident with, and not antagonistic to, those of the other Class members.

9 153. **Superiority. Fed. R. Civ. P. 23(b)(3).** Consistent with Rule 23(b)(3), a class action is
 10 superior to any other available means for the fair and efficient adjudication of this controversy, and no
 11 unusual difficulties are likely to be encountered in the management of this class action. The
 12 quintessential purpose of the class action mechanism is to permit litigation against wrongdoers even
 13 when damages to an individual Plaintiff may not be sufficient to justify individual litigation. Here, the
 14 damages suffered by Plaintiffs and the Class are relatively small compared to the burden and expense
 15 required to individually litigate their claims against Defendant, and thus, individual litigation to redress
 16 Defendant's wrongful conduct would be impracticable. Individual litigation by each Class member
 17 would also strain the court system. Individual litigation creates the potential for inconsistent or
 18 contradictory judgments and increases the delay and expense to all parties and the court system. By
 19 contrast, the class action device presents far fewer management difficulties and provides the benefits of
 20 a single adjudication, economies of scale, and comprehensive supervision by a single court.

21 154. **Injunctive and Declaratory Relief.** Class certification is also appropriate under Rule
 22 23(b)(2) and (c). Defendant, through its uniform conduct, acted or refused to act on grounds generally
 23 applicable to the Class as a whole, making injunctive and declaratory relief appropriate to the Class as a
 24 whole.

25 155. Likewise, particular issues under Rule 23(c)(4) are appropriate for certification because
 26 such claims present only particular, common issues, the resolution of which would advance the
 27 disposition of this matter and the parties' interests therein. Such particular issues are set forth in
 28 Paragraph 150(a)–(l) above.

156. Finally, all members of the proposed Class are readily ascertainable. Defendant has access to information regarding the individuals who purchased its defective Watches. Using this information, Class members can be identified and their contact information ascertained for the purpose of providing notice to the Class.

FIRST CLAIM FOR RELIEF
Violations of the Unfair Competition Law
Cal. Bus. & Prof. Code § 17200, *et seq.* (“UCL”)

157. Plaintiffs incorporate the above allegations by reference.

158. Plaintiffs assert this claim on behalf of the Class or, in the alternative, the California subclass.

159. Apple is a “business” as defined by § 17200.

160. The UCL proscribes “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

Unlawful

161. Apple's conduct is unlawful, in violation of the UCL, because it violates the Consumers Legal Remedies Act, the Song-Beverly Consumer Warranty Act, and the Magnuson-Moss Warranty Act (as alleged in this Complaint).

Unfair

162. Apple's conduct is unfair in contravention of the UCL because it violates California public policy, legislatively declared in both the Consumers Legal Remedies Act and the Song-Beverly Consumer Warranty Act. The CLRA prohibits unfair and deceptive business practices. Apple violated the CLRA because it sold defective watches (and as further described in this Complaint). The Song-Beverly Consumer Warranty Act requires a manufacturer to ensure that goods it places on the market are fit for their ordinary and intended purposes. Apple violated the Song-Beverly Act because the Apple Watch contains a material and unreasonable safety hazard (and as further described in this Complaint).

163. Apple also acted in an unethical, unscrupulous, outrageous, oppressive, and substantially

1 injurious manner with respect to Plaintiffs and the Class members. Apple engaged in unfair business
 2 practices and acts in at least the following respects:

- 3 • Apple promoted and sold Watches it knew were defective because they contain a Defect that
 4 constitutes a material and unreasonable safety hazard to consumers;
- 5 • Apple promoted and sold Watches with the Defect despite knowing that users do not expect the
 6 Watches to be a material and unreasonable safety hazard;
- 7 • Apple failed to disclose that the Watches are defective, and represented through advertising, its
 8 website, product packaging, press releases, and other sources that the Watches possess particular
 9 qualities that were inconsistent with Apple's actual knowledge of the product;
- 10 • Apple made repairs that caused repeated instances of failure and unbeknownst to consumers did
 11 not provide a permanent fix for the underlying safety hazard Defect to remove the ongoing threat
 12 that consumers could be injured;
- 13 • Apple failed to exercise adequate quality control and due diligence over the Watches before
 14 placing them on the market;
- 15 • Apple minimized the scope and severity of the problems with the Watches, refusing to
 16 acknowledge that they are defective and failing to provide adequate relief to consumers.

18 164. The gravity of harm resulting from Apple's unfair conduct outweighs any potential
 19 utility. The practice of selling defective Watches that contain an unreasonable safety hazard without
 20 providing an adequate remedy to cure the Defect – and continuing to sell those Watches without full and
 21 fair disclosure of the Defect – harms the public at large and is part of a common and uniform course of
 22 wrongful conduct.

23 165. The harm from Apple's conduct was not reasonably avoidable by consumers. The
 24 Watches suffer from a latent defect at the point of sale, and even after receiving a large volume of
 25 consumer complaints, Apple did not disclose the Defect. Plaintiffs did not know of, and had no
 26 reasonable means of discovering, that the Watches are defective.

27 166. There were reasonably available alternatives that would have furthered Apple's business
 28

1 interests of satisfying and retaining its customers while maintaining profitability, such as: (1)
 2 acknowledge the Defect and providing a permanent fix for the defective Watch; (2) adequately
 3 disclosing the Defect to prospective purchasers; (3) extending the warranty for the Watch; and (4)
 4 offering refunds or a suitable non-defective replacement Watch to consumers with defective watches.
 5
 6
 7

Fraudulent (Fraud by Omission)

8 167. Apple's conduct is fraudulent in violation of the UCL because it is likely to deceive a
 9 reasonable consumer and:

- 10 • Apple knowingly and intentionally concealed from Plaintiffs and Class members that the Watch
 11 contains a latent defect that renders the Watches prone to failure and causing personal injury.
- 12 • Apple volunteered information to Plaintiffs and Class members through advertising and other
 13 means that the Watch was a functional, premium product that assisted a safe and healthy lifestyle
 14 without disclosing facts that would have materially qualified those partial representations.
- 15 • Apple promoted the high quality and premium features of the Watch, including its role in a safe,
 16 healthy, and active lifestyle, despite knowing that the Watch is defective, and failed to correct its
 17 misleading partial disclosures.

19 168. Apple had ample means and opportunities to alert Plaintiffs and Class members of the
 20 defective nature of the Watches, including on Apple's Watch webpages; in its advertisements of the
 21 Watch; on the external packaging of the Watch; in its online purchase portals; in the User Manuals; and
 22 as part of the standardized Watch setup process. Apple uniformly failed to disclose that the Watch is
 23 defective. Had Apple disclosed that the Watch is defective, Plaintiffs and Class members would not
 24 have purchased a Watch, would not have purchased a Watch at the prices they did, or would have
 25 returned their Watch during the respective buyer's remorse periods.

26 169. Apple was under a duty to disclose the Defect because of its exclusive knowledge of the
 27 Defect before selling the Watch and because the Defect resulted in a material and unreasonable safety
 28

1 hazard and because Apple made partial representations about the Watch without disclosing the Defect.
2

3 170. Apple's omissions were material. Each Plaintiff was exposed to Apple's specific
4 representations about the Watch before and immediately after purchase and within the time period in
5 which they could have returned their Watch without penalty. Each Plaintiff saw the external packaging
6 of the Watch – which Apple developed – before purchasing or using the Watch and during the buyer's
7 remorse period and/or saw Apple's representations about the Watch online or in product advertisements,
8 and/or in the online purchase portal, and/or in the User Guide, and/or received further information from
9 Apple about the Watch during its setup process. None of the informational sources Plaintiffs or Class
10 Members encountered – advertisements, websites, external packaging, the online purchase portal, the
11 setup process, or the Watch launch event – indicated the Watch is defective.

12 171. Plaintiffs and Class members were unaware of the Defect until they experienced it. Had
13 Apple disclosed the Defect, including through advertising, press releases, the Watch packaging, the
14 online purchase portal, the User Guide, or the initial setup process, Plaintiffs and Class members would
15 have been aware of it, and would not have purchased a Watch, would have paid substantially less for it,
16 or would have returned it for a refund.

17 172. Absent Apple's unlawful, unfair and fraudulent conduct, Plaintiffs and Class members,
18 who were all unaware of the Defect and the unreasonable safety hazard it caused at the time of purchase,
19 would not have purchased a Watch, would not have purchased a Watch at the prices they did, or would
20 have returned their Watch for a refund during their respective buyer's remorse periods. Apple omitted
21 material information that it was under a duty to disclose and on which Plaintiffs and the Class members
22 would have relied.

23 173. Through its unlawful, unfair, and fraudulent conduct, Apple acquired Plaintiffs' money
24 directly and as passed on by Apple's authorized resellers (e.g., Best Buy, Amazon, and Walmart).
25 Plaintiffs and Class members suffered injury in fact, including lost money or property, as a result of
26 Apple's unlawful, unfair, and fraudulent conduct.

27 174. Plaintiffs and Class members accordingly seek appropriate relief, including: (1)
28

restitution under the UCL; and (2) such orders or judgments as may be necessary to enjoin Apple from continuing its unfair, unlawful, and fraudulent practices. Plaintiffs also respectfully seek reasonable attorneys' fees and costs under applicable law, including under California Code of Civil Procedure Section 1021.5.

SECOND CLAIM FOR RELIEF
**Violations of the Consumers Legal Remedies Act,
Cal. Civ. Code § 1750, et seq. (“CLRA”)**

175. Plaintiffs incorporate the above allegations by reference.

176. Plaintiffs assert this claim on behalf of the Class or, in the alternative, the California subclass.

177. Apple is a “person” within the meaning of California Civil Code sections 1761(c) and 1770, and provided “goods” within the meaning of sections 1761(a) and 1770.

178. Apple's acts and practices, as alleged in this complaint, violate California Civil Code sections 1770(a)(5), (7), and (9) because they include unfair and deceptive acts and practices in connection with transactions – the sale of defective Watches. In violation of the CLRA, Apple:

- Represented that the Watch had characteristics, uses, and benefits it does not have;
 - Represented that the Watch is of a standard, quality, or grade when in fact it is not; and
 - Advertised the Watch with intent not to sell it as advertised.

179. Through its design, development, and pre-release testing of the Watch, as well as through consumer complaints, as well as other means set forth in this Complaint, Apple knew that the Watch is defective, prone to failure, and presents a material and unreasonable safety hazard to consumers.

180. Apple was under a duty to disclose that the Watch is defective because it had superior knowledge of the Defect – through research, pre-release testing, consumer complaints, and the other means set forth in this Complaint – and because the Defect resulted in a material safety hazard and because Apple made partial, materially misleading representations about the Watch’s high quality,

1 premium features, and assistance in promoting a safe and healthy lifestyle.

2 181. Apple had ample means and opportunities to disclose to Plaintiffs and Class members
3 that the Watch is defective, including through advertisements and promotional materials, on external
4 packaging, in the online purchase portal, in the User Guides, and during the Watch's set up process.
5 Despite its exclusive knowledge and opportunities to disclose the Watch's defective nature, Apple failed
6 to disclose the Defect to Plaintiffs and Class members either prior to purchase or before Plaintiffs' and
7 Class members' respective buyer's remorse periods expired or any time thereafter.

8 182. Plaintiff Corey Pomroy and other Class members experienced the alleged Defect within
9 the Limited Warranty period.

10 183. Apple's omissions were material. Each Plaintiff was exposed to Apple's specific
11 representations about the Watch before and immediately after purchase and within the time period in
12 which they could have returned their Watch without penalty. Each Plaintiff saw the external packaging
13 of the Watch – which Apple developed – before purchasing or using the Watch and during the buyer's
14 remorse period and/or saw Apple's representations about the Watch online or in product advertisements,
15 and/or in the online purchase portal, and/or in the User Guide, and/or received further information from
16 Apple about the Watch during its setup process. None of the informational sources Plaintiffs
17 encountered – advertisements, websites, external packaging, the setup process, or the Watch launch
18 event – indicated the Watch is defective.

19 184. Plaintiffs and Class members were unaware of the Defect until they experienced it. Had
20 Apple disclosed the Defect, including through advertising, press releases, the Watch packaging, the
21 online purchase portal, the User Guide, or the initial setup process, Plaintiffs and Class members would
22 have been aware of it, and would not have purchased a Watch, would have paid substantially less for it,
23 or would have returned it for a refund.

24 185. Apple's conduct is ongoing and continuing, such that prospective injunctive relief is
25 necessary, especially given Plaintiffs' desire to purchase these products in the future if they can be
26 assured that the Watches are reasonably safe, functioned as advertised, and/or if the Court ordered Apple
27

1 to comply with relevant advertising and warranty laws.

2 186. Under California Civil Code section 1782(a), on their own behalf and on behalf of the
 3 Class, Plaintiffs Chris Smith, Cheryl Smith, Karen Smithson, Jason Roush, and Corey Pomroy served
 4 CLRA notices to Apple on November 8, 2021 (Exhibit A).

5 187. Plaintiffs' CLRA notices were sent via certified mail, return receipt requested, to Apple's
 6 principal place of business, advising Apple that it is in violation of CLRA and must correct, replace, or
 7 otherwise rectify the goods alleged to be in violation of California Civil Code section 1770.

8 188. Plaintiffs were injured by Apple's CLRA violations. As a result, Plaintiffs are entitled to
 9 injunctive and declaratory relief. Because Apple failed to correct its business practices or provide the
 10 requested relief within 30 days of the notice, Plaintiffs also seek monetary damages, reasonable
 11 attorneys' fees and costs, and punitive damages under the CLRA.

12 189. In accordance with California Civil Code section 1780(d), Plaintiffs' CLRA venue
 13 declarations are attached to this Complaint as Exhibits B through F.

15 **THIRD CLAIM FOR RELIEF**
 16 Fraud By Omission

17 190. Plaintiffs incorporate the above allegations by reference.

18 191. Plaintiffs bring this claim on behalf of the Class under California law or, alternatively, the
 19 law of the state in which each respective Plaintiff purchased a Watch.

20 192. Apple failed to disclose material facts about the safety and quality of the Watch. As
 21 alleged herein, Apple knew that the Watch was defective and dangerous before the Plaintiffs and Class
 22 members purchased them. Further, Apple was aware of numerous consumer complaints concerning
 23 Defect-related problems, but never disclosed the Defect to Plaintiffs and Class members.

24 193. Because the Defect in the Watch is latent and unobservable until it arises, Plaintiffs and
 25 Class members had no reasonable means of knowing that Apple's representations concerning the Watch
 26 were incomplete, false, misleading, or that it had failed to disclose that the Watch was defective.
 27 Plaintiffs and Class members did not and reasonably could not have discovered Apple's deceit before
 28 they purchased the Watch or before the end of their buyer's remorse periods.

1 194. Had Plaintiffs and Class members known that the Watch is defective, they would not
2 have purchased a Watch, would not have purchased it at the price they did, or would have returned it
3 during their respective buyer's remorse periods.

4 195. Apple had a duty to disclose the Defect to Plaintiffs, Class members, and the public
5 because the Defect results in a material and unreasonable safety hazard and Apple possessed exclusive
6 knowledge of it. Apple conducted pre-release testing of the Watch and its internal components. This
7 testing revealed or should have revealed the existence of the Defect before the Watch's release. Only
8 Apple had knowledge of and access to those test results.

9 196. Apple also had a duty to disclose the Defect because, through advertising, press releases,
10 and statements made during the launch event, on its Watch webpages, on its packaging, in its online
11 purchase portal, in its User Guide, on its devices during the pairing process, and in other sources that
12 Plaintiffs and Class members encountered before purchasing their Watches, Apple made partial
13 representations regarding the supposed high quality of the Watch and its premium features – including
14 its contribution to a user's health and safety – but failed to disclose facts that would have materially
15 qualified these partial representations. Having volunteered information relating to the Watch to
16 Plaintiffs and Class members, Apple had a duty to disclose the whole truth about the Watch and, in
17 particular, its defective nature.

18 197. Each Plaintiff was exposed to Apple's specific representations about the Watch before
19 and immediately after purchase and within the time period in which they could have returned their
20 Watch without penalty. Each Plaintiff saw the external packaging of the Watch – which Apple
21 developed – before purchasing or using the Watch and during the buyer's remorse period and/or saw
22 Apple's representations about the Watch online and/or in product advertisements, and/or in Apple's
23 online purchase portal, and/or in the User Guide, and/or received further information from Apple about
24 the Watch during its setup process. None of the informational sources Plaintiffs encountered –
25 advertisements, websites, external packaging, the online purchase portal, the setup process, or the Watch
26 launch event – indicated the Watch is defective. If Apple had made such disclosures, Plaintiffs would
27
28

have been aware of them.

198. Apple failed to disclose the Defect to sell more Watches at a premium price, prevent damage to its brand, turn so-called “repair” of the detached, shattered, or cracked screens resulting from the Defect into another profitable revenue stream for itself via expensive out-of-warranty service fees, and avoid the costs of developing a permanent fix for the Defect and of repairs, replacements, and refunds under its Warranty.

199. The facts about the Watch that Apple suppressed and omitted were material to a reasonable objective consumer, and Plaintiffs and Class members were unaware of them until they experienced the Defect. Had Apple disclosed the Defect, including through advertising, press releases, the Watch packaging, the online purchase portal, the User Guide, or the initial setup process, Plaintiffs and Class members would have been aware of it, and would not have purchased a Watch, would have paid substantially less for it, or would have returned it for a refund.

200. When deciding to purchase a Watch, Plaintiffs and Class members reasonably relied to their detriment upon Apple's material omissions regarding the quality of the Watch, the safety of the Watch, and the product Defect.

201. Plaintiffs and Class members sustained damages as a direct and proximate result of Apple's deceit and fraudulent concealment. Among other damage, Plaintiffs and Class members did not receive the value of the premium price they paid for the Watch.

202. Apple's fraudulent omission was malicious, oppressive, deliberate, intended to defraud Plaintiffs and Class members and enrich Apple, and in reckless disregard of Plaintiffs' and Class members' rights, interests, and well-being. Apple's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct, to be determined according to proof.

FOURTH CLAIM FOR RELIEF
Violations of the Song-Beverly Consumer Warranty Act
Cal. Civ. Code § 1792, *et seq.*

203. Plaintiffs incorporate the above allegations by reference.

204. Plaintiff Karen Smithson asserts this claim on behalf of the Nationwide Internet Subclass

1 and the California Subclass.

2 205. Plaintiff Karen Smithson is a “buyer” within the meaning of California Civil Code §
 3 1791(b). Plaintiff Karen Smithson purchased a Watch in California.

4 206. The members of the California Subclass are “buyers” within the meaning of California
 5 Civil Code § 1791(b). The members of the California subclass purchased their Watches in California
 6 directly from Apple through its website and/or the Apple Store App, through an Apple retail store
 7 located in California, and/or through one of its authorized reseller’s retail stores located in California.
 8 Title to the goods passed to these buyers in California. These Watches were “sold at retail in this state”
 9 as required by California Civil Code § 1792.

10 207. The members of the Nationwide Internet Subclass are “buyers” within the meaning of
 11 California Civil Code § 1791(b). The members of the Nationwide Internet Subclass purchased their
 12 Watches in California directly from Apple, which is located in California, through its website and/or the
 13 Apple Store App. Title to the goods passed to these buyers in California. Apple administers and
 14 operates its website in California, requires in its terms and conditions that California law applies to
 15 access and use of its website, and requires users to consent to jurisdiction and venue in California.⁴⁵
 16 Upon information and belief, Apple administers and operates its App store in California as part of its
 17 website, so the same terms and conditions apply.⁴⁶ These Watches were “sold at retail in this state” as
 18 required by California Civil Code § 1792.

19 208. Apple is a manufacturer within the meaning of California Civil Code § 1791(j). Apple
 20 was responsible for producing the Watch and directed and was involved in all stages of the production
 21 and manufacturing process.

22
 23
 24
 25 ⁴⁵ “Apple administers and operates the www.apple.com Site from its location in Cupertino, California USA You agree that all matters relating to your access to or use of the Site, including all disputes, will be governed by the laws of the United States and by the laws of the State of California without regard to its conflicts of laws provisions. You agree to the personal jurisdiction by and venue in the state and federal courts in Santa Clara County, California, and waive any objection to such jurisdiction or venue.” <https://www.apple.com/legal/internet-services/terms/site.html>

26
 27
 28 ⁴⁶ See previous footnote.

1 209. The Watch is a “consumer good[]” within the meaning of California Civil Code §
2 1791(a).

3 210. The Song-Beverly Consumer Warranty Act applies to both the Nationwide Internet
4 Subclass and the California Subclass.

5 211. Apple impliedly warranted to Karen Smithson and the Nationwide Internet Subclass and
6 the California Subclass that the Watch each purchased was “merchantable” under California Civil Code
7 §§ 1791.1 and 1792.

8 212. Apple breached the implied warranty of merchantability by producing, manufacturing,
9 and selling Watches that were not of merchantable quality. The Watch is defective and poses an
10 unreasonable safety hazard, resulting in destruction or operational failure of the Watch and/or personal
11 injuries. The Watch is therefore unfit for the ordinary purposes for which it is issued and would not pass
12 without objection in the watch or wearable device trade.

14 213. The defect in the Watch is latent. Though the Watch appears operable when new, the
15 Defect existed in the product at the time of sale and throughout the one-year Limited Warranty period
16 (or two years with Hermes and Edition models). Accordingly, any subsequent discovery of the Defect
17 beyond that time does not bar an implied warranty claim under the Song-Beverly Act.

18 214. Any attempt by Apple to disclaim its implied warranty obligations under the Song-
19 Beverly Act is ineffective due to its failure to adhere to California Civil Code §§ 1792.3 and 1792.4.
20 Those sections provide that, in order to validly disclaim the implied warranty of merchantability, a
21 manufacturer must “in simple and concise language” state: “(1) The goods are being sold on as ‘as is’ or
22 ‘with all faults’ basis; (2) The entire risk as to the quality and performance of the goods is with the
23 buyer. (3) Should the goods prove defective following their purchase, the buyer and not the
24 manufacturer, distributor, or retailer assumes the entire cost of all necessary servicing or repair.”
25 Apple’s attempted warranty disclaimer does not conform to sections 1792.3 and 1792.4.

26 215. As a direct and proximate cause of Apple’s breaches of the Song-Beverly Consumer
27 Warranty Act, Plaintiff Karen Smithson and the Nationwide Internet Subclass and the California
28

1 Subclass have been damaged in an amount to be proven at trial.
2

3 216. Plaintiff Karen Smithson and the Nationwide Internet Subclass and the California
4 Subclass, seek costs and expenses, including reasonable attorneys' fees, under California Civil Code §
5 1794.
6

7 **FIFTH CLAIM FOR RELIEF**
8 **Breach of Implied Warranty**

9 217. Plaintiffs incorporate the above allegations by reference.
10

11 218. Plaintiffs bring this claim on behalf of the Class under California law or, alternatively, the
12 law of the state in which each respective Plaintiff purchased a Watch.
13

14 219. By operation of law, Apple—as a manufacturer of the Apple Watch and as an offeror of
15 the Limited Warranty—impliedly warranted to Plaintiff and Class members that the Watches they were
16 purchasing were of merchantable quality and fit for their ordinary and intended use as safe, durable,
17 activity-tracking, smart-watch devices. The Watches were not, however, merchantable or fit for their
18 ordinary and intended use because the Watches suffer from the Defect described herein.
19

20 220. Consumers who did not purchase their Watches directly from Apple are, at the very least,
21 the intended third-party beneficiaries of the written distribution and supply agreements between Apple
22 and its authorized resellers, and of the implied warranties that attach to those contracts. The retailer
23 sellers were not intended to be the ultimate users of the Watches.
24

25 221. Consumers who did not purchase their Watches directly from Apple are also the intended
26 beneficiaries of the Limited Warranty that Apple provided to its authorized sellers with the Watches.
27

28 222. Apple impliedly warranted that the Watches were of merchantable quality and fit for such
use. This implied warranty included, among other things, a warranty that the Watches and their screens
were manufactured, supplied, distributed, and/or sold by Apple, were reliable, and would not experience
premature failure or be unreasonably dangerous when used in a reasonable and foreseeable manner by
consumers.
29

30 223. Apple breached the implied warranty of merchantability in connection with its sale and
31

1 distribution of the Watches. At the point of sale, the Watches—while appearing normal—contained the
 2 latent Defect rendering the Watches defective, unmerchantable, and unfit for their ordinary and intended
 3 purpose. The Watches were defective when they left Apple’s possession and were failure-prone and
 4 unreasonably dangerous at the point of sale. The defect in the Watch is latent. Though the Watch
 5 appears operable when new, the Defect existed in the product at the time of sale and throughout the one-
 6 year Limited Warranty period (or two years with Hermes and Edition models).

7 224. Had Plaintiff and Class members known that the Watches were defective, they would not
 8 have purchased them, would have paid less for them, or would have returned them for a refund during
 9 their respective buyer’s remorse periods.

10 225. Plaintiffs and Class members furnished Apple with a reasonable opportunity to cure its
 11 breach of warranty (Exhibit A), and otherwise complied with any and all obligations under the implied
 12 warranty. Despite knowing the Watches were defective prior to, or concurrent with, their respective
 13 releases, Apple has refused to provide Plaintiffs and Class members with appropriate warranty relief,
 14 leaving them without the functional and reasonably safe product they reasonably expected in making
 15 their purchasing decisions.

16 226. Apple’s actions, as complained of herein, breached the implied warranty of
 17 merchantability and, as a result, Plaintiffs and Class members have sustained damages in an amount to
 18 be determined at trial.

20 **SIXTH CLAIM FOR RELIEF**
 21 **Violation of the Magnuson Moss Warranty Act,**
 22 **15 U.S.C. § 2301, *et seq.***

23 227. Plaintiffs incorporate the above allegations by reference.

24 228. Congress enacted the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* in
 25 response to widespread consumer complaints regarding misleading and deceptive warranties. The Act
 26 imposes civil liability on any “warrant” for failing to comply with any obligation under written and
 27 implied warranties. 15 U.S.C. § 2310(d)(1).

28 229. This Court has jurisdiction over this matter under CAFA and can therefore assert

1 alternative jurisdiction over the Plaintiffs' MMWA claims.
2

3 230. The Watch is a "consumer product" as that term is defined by 15 U.S.C. § 2301(1).
4

5 231. Plaintiffs and the Class members are "consumers" as that term is defined by 15 U.S.C. §
6 2301(3).
7

8 232. Apple is a "supplier" as that term is defined by 15 U.S.C. § 2301(4).
9

10 233. Apple is a "warrantor" as that term is defined by 15 U.S.C. § 2301(5).
11

12 234. Apple has failed to remedy the Defect, despite Apple's knowledge and notice of the
13 Defect in Apple Watches.
14

15 235. Apple expressly warranted the Watches would be free of defects.
16

17 236. At the time Apple issued written warranties for the Watches, Apple knew and had notice
18 that the Watches had the propensity to prematurely fail and posed an unreasonable safety hazard because
19 of the Defect. Apple's continued omissions concerning the Defect, as well as Apple's failure to abide
20 by their own written and implied warranties, are "unfair methods of competition in or affecting
21 commerce, and [are] unfair or deceptive acts or practices in or affecting commerce." Accordingly,
22 Apple's behavior is unlawful under 15 U.S.C. §§ 2310(b), 45(a)(1).
23

24 237. Apple provided Plaintiff and Class members with "written warranties" as that term is
25 defined by 15 U.S.C. § 2301(6).
26

27 238. 15 U.S.C. § 2310(d)(1) provides that a consumer who is damaged by the failure of the
28 supplier, warrantor, or service contractor to comply with any obligation under this title, or a written
warranty, implied warranty, or service contract, may bring suit for damages and other legal and
equitable relief in any court of competent jurisdiction in any state.
29

30 239. Plaintiffs used their Watches in a manner consistent with its intended use and performed
31 each and every duty required under the terms of the Limited Warranty.
32

33 240. Plaintiffs and the Class members seek to recover damages caused as a direct result of
34 Apple's breach of their implied warranties and its unlawful conduct. Damages include costs associated
35 with repairing or replacing the Watches with non-defective Watches or other watches.
36

1 241. 15 U.S.C. § 2308(a) prohibits suppliers who offer a written warranty on a consumer
 2 product from disclaiming or modifying implied warranties. 15 U.S.C. § 2308(b) permits the restriction
 3 of the duration of an implied warranty to the duration of a limited written warranty of reasonable
 4 duration. Apple's Limited Warranty provides a warranty period of one-year (or two years for Hermes
 5 and Edition models), so under the Magnuson-Moss Warranty Act Apple cannot disclaim implied
 6 warranties with respect to Watch failures within the one-year (or, for Hermes and Edition models, two-
 7 year) period offered in Apple's Limited Warranty. Further, under California law, claims for breach of
 8 implied warranty are not barred or limited by any disclaimer because the latent Defect was present at the
 9 time of sale and California law does not require them to discover and report the defect within the
 10 duration of the implied warranty.

11 242. Apple's attempt to disclaim implied warranties for failures caused by the Defect within
 12 the duration of the applicable one-year (or two-year with Hermes and Edition models) Limited Warranty
 13 is null and void as a violation of the Magnuson Moss Warranty Act.

14 243. All jurisdictional prerequisites have been satisfied.

15 244. Under 15 U.S.C. § 2310, on their own behalf and on behalf of the Class, Plaintiffs Chris
 16 Smith, Cheryl Smith, Karen Smithson, Jason Roush, and Corey Pomroy sent pre-suit notices of
 17 violations of the Magnuson Moss Warranty Act to Apple that were served on November 8, 2021 via
 18 certified mail, return receipt requested to Apple's principal place of business in California (Exhibit A).

19 245. Plaintiffs' Magnuson Moss Warranty Act notices advised Apple that it is in violation of
 20 the Magnuson Moss Warranty Act and that Plaintiffs are acting on behalf of a class, and affording Apple
 21 a reasonable opportunity to cure its failure to comply. Apple failed to correct its business practices or
 22 provide the requested relief within a reasonable time.

23 246. Plaintiffs were injured by Apple's Magnuson Moss Warranty Act violations.
 24 Accordingly, Plaintiff and the Class members suffered damages caused by Apple's breach of implied
 25 warranties and are entitled to recover damages, including, but not limited to, diminution of value,
 26 equitable relief, and attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, respectfully request that this Court:

A. Determine that the claims alleged herein may be maintained as a class action under Federal Rule of Civil Procedure 23, and enter an order certifying the Class defined above and appointing Plaintiffs as Class representatives;

B. Award all actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiffs and Class members are entitled;

C. Award pre-judgment and post-judgment interest as provided by law;

D. To the extent an adequate remedy at law does not exist: (a) grant appropriate equitable relief, including, without limitation, an order requiring Apple to: (1) adequately disclose the defective nature of the Watch; and (2) return to Plaintiffs and Class members all costs attributable to remedying or replacing Apple Watches, including but not limited to economic losses from the purchase of replacement Watches; (b) enjoin Apple from failing to honor its warranties as to the Defect it knew about before it sold the Watches; and/or (c) grant such other equitable relief to which Plaintiffs and Class members are entitled.

E. Award reasonable attorneys' fees and costs as permitted by law; and

F. Grant such other and further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all issues triable as of right.

Dated: December 9, 2021

By: /s/ Michael F. Ram

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